

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF R.J. REYNOLDS TOBACCO COMPANY

24 (DESIGNEES JOHN H. ROBINSON AND DAVID N. IAUCO)

25 Volume III, Pages 207 - 421

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (The following is the continued deposition
2 of R.J. REYNOLDS TOBACCO COMPANY (DESIGNEES JOHN H.
3 ROBINSON AND DAVID N. IAUCO), taken pursuant to
4 Notice of Taking Deposition by Rule 30.02(f), by
5 videotape, at the offices of Womble Carlyle
6 Sandridge & Rice, Attorneys at Law, 3300 One First
7 Union Center, 301 South College Street, Charlotte,
8 North Carolina, on August 22, 1997, commencing at
9 approximately 8:30 o'clock a.m.)

10

11

12 APPEARANCES:

13 On Behalf of the Plaintiffs:

14 Daniel A. O'Fallon
15 Robins, Kaplan, Miller & Ciresi
16 2800 LaSalle Plaza
17 800 LaSalle Avenue
18 Minneapolis, Minnesota 55402-2015

19

20 On Behalf of Lorillard Tobacco Company:

21 Michael R. Docherty
22 Doherty, Rumble & Butler
23 2800 Minnesota World Trade Center
24 30 East Seventh Street
25 St. Paul, Minnesota 55101-4999

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 On Behalf of Philip Morris Incorporated:

2 James D. Layden

3 Arnold & Porter

4 777 South Figueroa Street

5 Forty-Fourth Floor

6 Los Angeles, California 90017-2513

7

8 On Behalf of R.J. Reynolds Tobacco Company:

9 Sydney Bosworth McDole and

10 Robert F. McDermott, Jr.

11 Jones, Day, Reavis & Pogue

12 2300 Trammell Crow Center

13 2001 Ross Avenue

14 Dallas, Texas 75201

15

16 Jonathan M. Redgrave

17 Gray, Plant, Mooty, Mooty & Bennett, P.A.

18 3400 City Center

19 33 South Sixth Street

20 Minneapolis, Minnesota 55402-3796

21

22

23

24

25

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	RJR 1112	Advertisement, Bates	
4		50192 6233	213
5	1113	September 9, 1980 memorandum,	
6		Knopick to Kloepper, Bates	
7		TIMN 0107822-3	221
8	1114	Biobehavioral Aspects of	
9		Smoking, Copies of	
10		Transparencies, Bates	
11		50283 5325-37	247
12	1115	Estimated Nicotine Delivery	
13		to the Brain, Bates	
14		50282 4762-4800	270
15	1116	October 7, 1988 R&DM, 1988,	
16		No. 265, An Integrated	
17		Research Program for the	
18		Study of Nicotine and its	
19		Analogs, Bates	
20		51489 4567-676	282
21	1117	Advertisement, Bates	
22		50664 6981	310
23	1118	September 21, 1972	
24		correspondence, Sherrill to	
25		Smith, Bates 50076 9839-40	335

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1	1119	October 30, 1975 Product	
2		Research Report, Wallace to	
3		Ogburn, Bates 50354 2726-9	337
4	1120	Advertisement, Bates	
5		50071 3032	346
6	1121	July 22, 1980 Inter-office	
7		correspondence, Long to	
8		Morrigan, Bates 50845 3894	355
9	1122	February 1, 1985 Marketing	
10		Research Report, Mitchell	
11		to Caufield, Bates	
12		50458 5737-57	389
13	1123	October 31, 1977	
14		correspondence, Durgee to	
15		Ogburn, Bates 50138 0878-89	399
16	1124	Advertisement, Bates	
17		50687 6716-8	411
18			
19			
20	WITNESS	EXAMINATION BY	PAGE
21	John H. Robinson	Mr. O'Fallon	212
22		Ms. McDole	299
23		Mr. O'Fallon	302
24	David N. Iauco	Mr. O'Fallon	306
25			

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 P R O C E E D I N G S

2 (Witness sworn.)

3 JOHN H. ROBINSON

4 called as a witness, being first duly

5 sworn, was examined and testified

6 as follows:

7 ADVERSE EXAMINATION

8 BY MR. O'FALLON:

9 Q. Could you please state your name for the
10 record.

11 A. John H. Robinson.

12 Q. Are you currently an R.J. Reynolds employee?

13 A. Yes, sir.

14 Q. And what is your current position?

15 A. My title is principal scientist and head of the
16 Psychophysiology Division. That's p-h-y-s-i-o -- I'm
17 sorry, p-h-y -- p-s-y-c-h-o-p-h-i-s-i-o-l-o-g-y.

18 Q. Dr. Robinson, you have been designated by R.J.
19 Reynolds Tobacco Company as the individual most
20 knowledgeable to speak on R.J. Reynolds' behalf on the
21 issues of addiction and public statements concerning
22 addiction; is that correct?

23 A. Yes, sir.

24 Q. And you're ready to so testify; correct?

25 A. Yes, sir.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Dr. Robinson, R.J. Reynolds has publicly
2 contended that smoking is not addictive; correct?

3 A. I don't -- I think it -- it depends on what
4 you're looking at. I've published numerous
5 manuscripts in the peer reviewed literature on that
6 issue, and I think that how you have characterized it
7 is often how it comes across in sound bites in the
8 press, et cetera. I think I've tried to explain that
9 issue in much more detail in my writings, and I think
10 our position, my position certainly, has been it
11 depends on what you mean by the word "addiction."

12 Q. Well R.J. Reynolds has taken out public
13 advertisements concerning addiction; isn't that true,
14 sir?

15 A. I've -- I've -- I've seen some ad copies. I
16 don't know that they were actually published. I had
17 not seen any myself in the media. I know not every
18 ad that is worked up is published.

19 MR. O'FALLON: Why don't you also mark
20 this. Oh, I don't need that marked. I'm sorry,
21 that's already been marked.

22 (Plaintiffs' Exhibit 1112 was marked
23 for identification.)

24 BY MR. O'FALLON:

25 Q. Dr. Robinson, I've had marked as Plaintiffs'

1 Exhibit 1112 a document Bates stamp numbered
2 50192 6233. Would you take a look at that.
3 A. Yes, sir.
4 Q. This says at the bottom "R.J. Reynolds Tobacco
5 Company"; correct?
6 A. Yes, sir.
7 Q. And it says "Is smoking an addiction?";
8 correct?
9 A. That is the title of the --
10 THE WITNESS: Sorry.
11 MS. McDOLLE: Sorry.
12 A. That is the title of the page, yes.
13 Q. And the basic gist of this advertisement is to
14 state that smoking is not addictive; isn't that
15 true?
16 A. I don't know that I would agree with that --
17 that characterization. I think -- and again I don't
18 know if this appeared anywhere, but I think this
19 one-page document is an attempt to capture the spirit
20 of some of my publications in -- in the peer reviewed
21 literature and the position that I've outlined on
22 this issue in -- in those -- in those writings.
23 Q. Okay. Now the peer reviewed literature you're
24 talking about, where have you published again?
25 A. I've published in numerous journals, this --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 this particular issue I've published -- this
2 particular issue published at least two articles in
3 the Journal of Psychopharmacology.

4 Q. Now you understand that the Journal of
5 Psychopharmacology isn't a journal that the vast
6 majority of smokers will ever have the opportunity to
7 read; correct?

8 MS. McDOLE: Ever have the -- objection to
9 the form of the question.

10 MR. O'FALLON: Will ever read.

11 A. I don't -- I don't know if smokers will read
12 that or not. It's certainly available out there in
13 the public press, or I should say it's certainly out
14 there in the -- in the literature. The public press
15 did pick up on that and I've also been interviewed by
16 newspapers, television, made the same presentation
17 of -- of this position at an international meeting in
18 Montreal in 1994 and then a few days later at the FDA
19 hearings, Drug Abuse Advisory Committee, made the
20 same presentation, and that was on all the television
21 stations, et cetera.

22 Q. Including all the television stations in
23 Minnesota? You don't know that, do you?

24 A. I'm sorry, I don't know that it was on there.
25 It was -- it was -- it was on national news media.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. You don't know what national news media it was
2 on, do you?

3 A. I saw it on, I believe, ABC and NBC.

4 Q. But you still felt or your company apparently
5 felt that you had to put together an advertisement
6 concerning addiction; correct?

7 MS. McDOLLE: Objection to the form of the
8 question.

9 A. I don't know that they felt they had to. I -- I
10 think it's an attempt to state our position on the
11 issue.

12 Q. Well, Doctor, is smoking addictive?

13 A. I would point you to my writings on this, and
14 I -- I think it -- as -- as the crux of the issue
15 that I've tried to report on in those writings is it
16 depends on what you mean. I've -- by the word
17 "addictive." I've -- I've said it in writings.
18 I've said it in my presentations. If your meaning or
19 your definition of "addiction" is a behavior that may
20 be difficult to quit or some people may find
21 difficult to quit, then yes, cigarettes are
22 addictive.

23 If your definition of "addiction," as is
24 generally understood and certainly has been
25 highlighted by many in the -- on the other side of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 this issue, if your definition is like heroin and
2 cocaine, no, I disagree with that very strenuously,
3 and I've -- I've put that in my writings.

4 Q. Well let's talk a little bit about your
5 definition of "addiction." Dr. Robinson, would you
6 agree that the American Psychiatric Association's
7 Diagnostic and Statistical Manual-IV -- the DSM-IV,
8 you're familiar with that?

9 A. I've -- I've read parts of that, yes.

10 Q. Okay. That that criteria is the accepted
11 standard for substance dependence and can be used to
12 define any substance of dependence?

13 A. I don't know that it's an accepted standard.
14 They have a definition. I would -- I would note that
15 their definition is quite different than what has
16 historically evolved from addictive sciences. I
17 would say that -- and -- and this is a problem -- or
18 this is the problem that I've tried to highlight
19 in -- in much of my writings -- I think the
20 definition that I point to is scientifically
21 testable, scientifically measurable. Definitions
22 that cannot distinguish certain key behaviors fall
23 short of that.

24 So for instance, just recently, just in the last
25 ten -- ten weeks -- ten days, two weeks ago, I saw a

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 letter signed by many of the people who I have termed
2 in the literature the nicotine addiction proponents
3 to, I believe, FDA saying that caffeine is
4 addictive. I disagree with that characterization
5 that cannot -- using a word that cannot distinguish
6 between crack smoking and coffee drinking. I think
7 the physiologic, pharmacologic and behavioral effects
8 of things like nic -- nicotine and caffeine are
9 fundamentally different from addicting drugs like
10 heroin and cocaine.

11 Q. You would agree that nicotine is a drug;
12 correct?

13 A. As a scientist, if you take nicotine out of
14 the -- out of the plant and administer it in a -- in
15 a study to a biological organism, yes, nicotine would
16 be a drug. I don't consider nicotine as it appears
17 in tobacco a drug. I don't consider coffee --
18 caffeine as it appears in coffee a drug. If you take
19 caffeine out of the plant, out of the bean, and put
20 it in a NoDoz pill and sell it, then it is a drug.

21 Q. By the way, you're not a psychiatrist, --

22 A. And --

23 Q. -- are you, sir?

24 A. And I'm sorry, can I add one more thing? I -- I
25 would say that I certainly don't think it's a drug as

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 commonly understood by the layman, meaning an illicit
2 drug.

3 Q. You're not a psychiatrist, are you, sir?

4 A. No, sir.

5 Q. And the definition that you cite and that R.J.
6 Reynolds cited in its advertisement, that's not a
7 definition that's been accepted by any foundation.
8 At least you don't cite a foundation there when you
9 cite Dr. Blau, do you, sir?

10 A. We do not cite any foundation.

11 Q. Thank you.

12 A. I would point out that my articles were based on
13 not what I -- what people have labeled as my
14 definition, but were based on definitions that were
15 widely accepted; for instance, when the 1964 Surgeon
16 General's report was published, and --

17 Q. 1964 Surgeon General?

18 A. That's correct.

19 Q. You understand that's been superseded, don't
20 you, sir?

21 MS. McDOLLE: Excuse me, let him finish his
22 answer.

23 MR. O'FALLON: I'm going to move to strike
24 everything after --

25 MS. McDOLLE: Fine, you can do that, but let

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 him finish his answer.

2 John, do you remember where you were?

3 A. I was going to say, I was pointing out that that
4 definition I think highlighted very important
5 distinctions that are still valid today, and that's
6 what we've lost with the current definitions.

7 Q. You would agree that the tobacco industry is
8 simply scared to death that their product is going to
9 be labeled as addictive, aren't you, sir?

10 MS. McDOLLE: Objection to the form of the
11 question.

12 A. I -- I -- I don't know that -- that we're --
13 we're scared to death.

14 Q. Well your own lawyers have told the industry
15 that "... the entire matter of addiction is the most
16 potent weapon a prosecuting attorney can have in a
17 lung cancer/cigarette case. We can't defend
18 continued smoking as 'free choice' if the person was
19 'addicted.'" That's correct, isn't it, sir?

20 A. I --

21 MS. McDOLLE: Objection to the form of the
22 question.

23 A. -- I don't know if that's correct or not. My --
24 my position on that and as I've tried to write is
25 that smoking is more accurately labeled as "habit"

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 than "addiction."

2 (Plaintiffs' Exhibit 1113 was marked
3 for identification.)

4 MS. McDOLE: It's the same thing; it's just
5 marked.

6 BY MR. O'FALLON:

7 Q. Plaintiffs' 1113 is a document Bates stamp
8 numbered TIMN 0107822 to 823, dated September 9th,
9 1980. This is a document that's been produced in
10 this lit -- in this litigation by The Tobacco
11 Institute.

12 You're aware of The Tobacco Institute; correct,
13 Dr. Robinson?

14 A. Yes, sir.

15 Q. And what this addresses, at least on the first
16 page, is the fact that The Tobacco Institute was
17 caught by surprise when the National Institute of
18 Drug Abuse wanted "addictive" added to the cigarette
19 warning; correct?

20 A. It says in reference to that "I wonder if The
21 Institute was caught unaware on this matter."

22 Q. Right. It says at the first paragraph, quote,
23 "Attached please find the technical review of the
24 conference which led to Victor Cohn's," quote,
25 "'surprise,'" end quote, "story of 8/30 that the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 National" -- "National Institute of Drug Abuse
2 wants," quote, "'addictive,'" end quote, "added to
3 the cigarette warning."

4 So that's what this memo appears to be about;
5 correct?

6 A. That -- that's -- that's what it says, yes.

7 Q. Okay. Let's look on the second page where
8 Mr. Knopick states, quote, "I feel badly about my own
9 lack of intelligence-gathering in this situation.
10 But I don't think the questions I now raise are
11 academic. Shook, Hardy reminds us, I'm told, that
12 the entire matter of addiction is the most potent
13 weapon a prosecuting attorney can have in a lung
14 cancer/cigarette case. We can't defend continued
15 smoking as," quote, "'free choice' if the person
16 was," quote, "'addicted,'" end quote.

17 Have you ever heard the Shook Hardy lawyers
18 indicate that?

19 A. I have not, no.

20 Q. You understand that Shook Hardy is a firm that
21 has represented the tobacco industry for a number of
22 years; correct?

23 A. I understand.

24 MS. McDOLLE: Tobacco -- objection to the
25 form of that question.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. You understand that; correct?

2 A. I -- I understand Shook Hardy has tobacco
3 clients. I don't know who they are or what length of
4 time.

5 Q. And this whole notion of free choice is a notion
6 that R.J. Reynolds was trying to emphasize again in
7 its ad on addiction by blaming the smokers; correct?

8 MS. McDOLE: Objection to the form of that
9 question.

10 A. I don't -- I don't think we're trying to blame
11 anyone here. Again, I don't know if this ad ever
12 appeared.

13 Q. You don't --

14 A. It appears --

15 Q. -- know it didn't appear either; correct?

16 A. No, sir, I do not. It appears that this is an
17 attempt to summarize the writings that I've published
18 on the issue of cigarette smoking and nicotine
19 addiction. I would say that it's a fair
20 characterization of what I've tried to present in the
21 peer reviewed literature.

22 Q. Did you help put this advertisement together?

23 A. I -- I did not see a final copy that I recall of
24 this advertisement --

25 Q. And they don't --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. -- or -- or this document. I would say that the
2 people in public relations call me from time to
3 time. I do review some sections, portions of various
4 documents. They're free to interact with me. They
5 have all of my publications, presentations,
6 et cetera, things along those lines.

7 Q. They didn't cite you in this ad, did they?

8 A. No, sir, they didn't.

9 Q. And what they say at the end is that --
10 concerning why people continue to smoke is, quote,
11 "It's not because they can't stop; it's because they
12 don't want to." So once again, you're trying to
13 emphasize choice; right?

14 A. I --

15 MS. McDOLLE: Objection to the form of that
16 question.

17 A. I don't know again what -- that we're trying to
18 emphasize anything. Our position is people are free
19 to choose whether to stop smoking or to continue
20 smoking. Quite recently there have been a -- a
21 number of allegations positioned by the -- I would
22 say what I term the addiction proponents that
23 nicotine in cigarette smoke robs people of their free
24 will, robs them of their ability to choose, to think
25 and reason clearly. I do not believe that to be the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 case. There's -- there's nothing in -- in cigarette
2 smokes that im -- impairs a person's ability to think
3 or reason clearly to make the decision whether to
4 continue to smoke or not smoke.

5 Q. Well apparently those proponents of the nicotine
6 addiction theory agree with your lawyers, Shook,
7 Hardy & Bacon, don't they?

8 A. I'm -- I'm sorry, I don't understand what you're
9 asking.

10 Q. Basically what you said they're contending is
11 exactly what Shook, Hardy & Bacon was saying, which
12 is that you can't defend smoking as free choice if
13 people are in fact addicted; isn't that true, sir?

14 MS. McDOLE: Objection to the
15 mischaracterization of his testimony.

16 A. I -- I -- I don't under -- I don't -- I don't
17 understand the legal rulings or meanings there. My
18 point is that there's nothing in cigarette smoke that
19 impairs an ability -- a person's ability to think or
20 reason clearly, nothing that impairs their free will,
21 nothing that prevents them from continuing to smoke
22 or choosing to stop smoking.

23 Q. You understand the majority of smokers want to
24 quit; correct?

25 A. I understand that in -- in surveys that are

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 conducted people often respond that they would like
2 to quit smoking. I think that represents a number
3 of -- of issues. It shows they're aware of -- of the
4 risks associated with smoking. It shows they are --
5 well, they understand, I think, that smokers are
6 often treated as second-class citizens, have been
7 ostracized. It -- it shows that there are things
8 they would prefer to do without smoking.

9 However, I don't think there's anything that
10 says they can't stop smoking.

11 Q. They believe they can't stop smoking; correct?

12 MS. McDOLE: Objection to the form of the
13 question.

14 A. I don't know what -- what people believe.

15 Q. You've just given us a whole opinion on what you
16 think people believe.

17 MS. McDOLE: Objection to the
18 mischaracterization of testimony.

19 A. I would say that people have been bombarded
20 recently or over the last decade or so with the idea
21 that they are addicted to cigarettes. I think that
22 is -- and many of them have come to think that way.
23 My opinion is that's -- that's one of the worst
24 things that you can tell a person if you want them to
25 stop smoking. I think data on smoking cessation

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 trials has shown that consistently people -- the
2 number-one predictor of success in those kinds of
3 trials is the person's confidence going in that they
4 will be able to quit.

5 Q. Well people have also been proven to be able to
6 quit cocaine, so perhaps we should simply start
7 telling the cocaine addicts they're not addicted as
8 well under your reasoning; correct, sir?

9 A. I think you should tell them that they can quit
10 if they -- if they want to. People quit cocaine.
11 People quit other drugs of abuse. That doesn't mean
12 they do it simply by making up -- making the decision
13 to do it and sticking to that decision.

14 Q. So you would basically treat cocaine addiction
15 and cigarette addiction in the same fashion?

16 MS. McDOLLE: Objection to the
17 mischaracterization of testimony.

18 A. No, I don't think I said that.

19 Q. You would just tell them the same thing, that
20 it's really up to them to quit their addiction;
21 correct?

22 A. It is up to them to quit.

23 Q. Right. Certainly if you believed and if R.J.
24 Reynolds believed that cigarettes were addictive,
25 they would tell the public that; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Again I think it depends on what you mean by
2 "addiction." If you mean a behavior that may be
3 difficult to quit, I've said that in my writings.
4 I've said that labeling it a habit does not mean it
5 would be easy to quit for some people. What labeling
6 a habit does is point to key distinctions between the
7 physiologic and behavioral effects of what I consider
8 addicting drugs and things like compared to nicotine
9 and caffeine.

10 If cigarettes were addictive in the sense as
11 many people charge, like heroin and cocaine, I don't
12 think they should be allowed to be sold. I don't
13 think we should be selling substances -- substances
14 like that and telling people they're addictive.

15 Q. And you don't see any in-between stance, do
16 you? It's either got to be like heroin or cocaine or
17 you won't call it addictive; correct, sir?

18 MS. McDOLLE: Objection to the form of that
19 question.

20 A. I don't think I've said that. I think what I've
21 said is there are key distinctions that lumping
22 everything under one word does not point to.

23 Q. You certainly wouldn't withhold information from
24 the smoking public related to addiction if you had
25 important information in your files, would you, sir?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I think any corporation has proprietary
2 information that they keep to themselves, and that
3 doesn't matter if it's tobacco companies, consumer --
4 any consumer product companies, Coca-Cola, Procter &
5 Gamble. I don't know that we put everything out
6 there.

7 If we had information that would suggest that
8 cigarette smoking or nicotine is, as I think you
9 would like to characterize it, addicting in the sense
10 of heroin, cocaine, barbiturates, I don't think we
11 should be selling them.

12 Q. That wasn't my question, and I'll move to
13 strike.

14 Do you think if you have information in your
15 files that indicates that nicotine is an addictive
16 drug or even a habituating drug, that you should tell
17 the public point blank, "Yes, this is a habituating
18 drug"?

19 MS. McDOLLE: Well that wasn't your
20 question. You've rephrased it, but in any event, the
21 answer was responsive.

22 THE WITNESS: I'm sorry, could you ask that
23 again.

24 MR. O'FALLON: Well, once again, Counsel,
25 the word we use here in this litigation is

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 "objection," and then we state the basis for it, and
2 I would appreciate it if you would follow that. You
3 seem to have a tendency not to do that, and I'm going
4 to ask you nicely to do that, but I'm not going to
5 tolerate a lot more of your speaking objections. You
6 want to argue about something later on, we can do
7 that before the court. This isn't the time we need
8 to do it. Okay? Would you agree to that?

9 MS. McDOLE: I note your comment and your
10 lecture.

11 MR. O'FALLON: And you have read our court
12 orders in this case; right?

13 MS. McDOLE: I think we covered that
14 yesterday.

15 MR. O'FALLON: I know. Did you answer my
16 question yesterday?

17 MS. McDOLE: I think we're wasting time.

18 MR. O'FALLON: Well you've interrupted my
19 questioning and you've interrupted my flow. We've
20 lost the question that I had before him, so that's
21 why we actually have the rule, so that we don't have
22 to do this. So I'm going to try to engage in a
23 little colloquy now in the hopes of avoiding a great
24 deal of colloquy in the future.

25 MS. McDOLE: If -- if you want to -- you've

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 made your motion. The answer was responsive to your
2 question. Now you've told the witness you were --
3 you were restating the question. It's a -- it's a
4 different question. It's not the same question. You
5 can just ask the reporter to read it back.

6 MR. O'FALLON: Oh, I'm going to.

7 MS. McDOLE: Fine.

8 MR. O'FALLON: Are you done?

9 MS. McDOLE: I'm sorry, I thought you
10 started all this.

11 MR. O'FALLON: Let's go ahead and read it
12 back.

13 MS. McDOLE: Just so the record is clear,
14 are we reading back the question -- why don't we put
15 into the record what question you are reading back
16 because there were two different questions. There
17 was a question he answered and then there was a
18 question that I objected to.

19 MR. O'FALLON: Are you being paid by the
20 word?

21 MS. McDOLE: I'd like the record --

22 MR. O'FALLON: Why don't you let it --

23 MS. McDOLE: Excuse me.

24 MR. O'FALLON: -- be read back and --

25 MS. McDOLE: Excuse me.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. O'FALLON: -- then you can state the
2 objection.

3 MS. McDOLE: Could you give me the courtesy
4 of not interrupting?

5 MR. O'FALLON: Well can you give me the
6 courtesy of allowing me to conduct this deposition?
7 I did exactly what we wanted to. I did exactly what
8 the witness requested, and then you wanted to go on
9 and on. Now let's just do it. If you've got an
10 objection, I'll consider your objection and I'll
11 think about whether I want to restate the question.

12 MS. McDOLE: Mr. Reporter, could you please
13 reflect in the record what question you read back to
14 the witness?

15 MR. O'FALLON: He's just going to read it.

16 MS. McDOLE: Could you do that for me,
17 sir?

18 THE REPORTER: Certainly.

19 MS. McDOLE: Thank you.

20 (The following question was read by
21 the court reporter:

22 "That wasn't my question, and I'll move
23 to strike.

24 "Do you think if you have information
25 in your files that indicates that nicotine

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 is an addictive drug or even a habituating
2 drug, that you should tell the public
3 point blank, 'Yes, this is a habituating
4 drug'?")

5 A. I don't know that I would say point blank "yes"
6 or "no." I think anything that we would say should
7 be put in context so that our full position is
8 understood; that this is a very complex, convoluted
9 area, shifting definitions, changing words. I think
10 that's exactly what I tried to do in -- or what I
11 have tried to do in many of my writings that I
12 have -- I have put out there.

13 Q. R.J. Reynolds has known for some time that
14 nicotine is a drug; correct?

15 A. I -- I don't know the answer to that. As I
16 said, I do not consider nicotine in tobacco plant as
17 a drug, as I do not consider caffeine in coffee being
18 as a -- a drug. If you take the substance out of the
19 plant, put it in a vial, give it to an organism, yes,
20 then in medical terms it is a drug.

21 Q. In fact, internal R.J. Reynolds documents have
22 said that "In a sense, the tobacco industry may be
23 thought of as ... a specialized, highly ritualized
24 and stylized segment of the pharmaceutical industry";
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. McDOLE: Objection to the form.

2 A. I've seen that quote. I don't -- I don't know
3 that -- that that is a company position. I -- I in
4 fact -- I don't think that is the company's
5 position. It's certainly not my position.

6 Q. It's certainly not their public position;
7 correct?

8 A. I don't think it's our position, public or
9 private.

10 Q. I'm going to show you what's been previously
11 marked as Plaintiffs' Exhibit 1057. This is a
12 document entitled "RESEARCH PLANNING MEMORANDUM ON
13 THE NATURE OF THE TOBACCO BUSINESS AND THE CRUCIAL
14 ROLE OF NICOTINE THEREIN." I'd like you to look at
15 the first full page of text of that document starting
16 at the top under "MEMORANDUM."

17 This is the document you've seen previously;
18 correct, sir?

19 A. I have seen this, yes.

20 Q. This states, quote, "In a sense, the tobacco
21 industry may be thought of as being a specialized,
22 highly ritualized and stylized segment of the
23 pharmaceutical industry"; correct?

24 A. It states that, yes.

25 Q. R.J. Reynolds contemporaneous with this memo in

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 1972 never took out an ad and told the public that
2 the tobacco industry may be thought of as a
3 specialized, highly ritualized and stylized segment
4 of the pharmaceutical industry, did it, sir?

5 A. I -- I don't think we take out advertisements
6 based on one person's opinion or -- or one sentence
7 in a memo that someone may write. Again I do --

8 Q. So your answer is no?

9 MS. McDOLE: Let him finish his answer.

10 A. Again I do not believe this is -- this is a
11 company position. This may represent one person's
12 thoughts on the issue, but this is not, as far as I
13 know, the company's position, and therefore I don't
14 think they should take out an ad stating something
15 that is not what they believe.

16 Q. The second sentence is, quote, "Tobacco
17 products, uniquely, contain and deliver nicotine, a
18 potent drug with a variety of physiological effects";
19 correct?

20 A. That's what it says, yes.

21 Q. "Physiological" means effects on the body;
22 correct?

23 A. "Physiological"/"pharmacological" generally
24 means again have effects on the body.

25 Q. Okay. It states "Nicotine is known to be a

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 habit-forming alkaloid, hence the confirmed user of
2 tobacco products is primarily seeking the"
3 psychological -- "the physiological," quote,
4 "'satisfaction,'" end quote, "derived from
5 nicotine -- and perhaps other active compounds";
6 correct?

7 A. That's what it states, yes.

8 Q. And again, R.J. Reynolds didn't take an ad
9 telling the smoking public that in 1972, did they?

10 A. I don't know of any ad that was taken out.
11 Again, I would say that this represents one -- one
12 person's, as far as I know, thoughts on the matter.
13 If you were reviewing the literature at this point in
14 time, I think this is exactly the kind of thing you
15 would read in -- in the -- in the literature.

16 Q. So apparently it's more than one man's opinion?

17 A. I said I think it may be, to some extent, a
18 summary of -- of what appears in the literature.
19 Much of this, I think, is certainly unknown at that
20 time. This represents, as far as I know, one
21 person's writings in R.J. Reynolds, was what I
22 referred to as -- as one person.

23 I don't know if the person believed this. I
24 don't know if they were summarizing. I don't know if
25 they were perhaps thinking out loud.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. He then goes on to state, quote, "His choice of
2 product and pattern of usage are primarily determined
3 by his individual nicotine dosage requirements and
4 secondarily by a variety of other considerations
5 including flavor and irritancy of the product, social
6 patterns and needs, physical and manipulative
7 gratifications, convenience, cost, health"
8 consciousness, "and the like. Thus" the "tobacco
9 product is, in essence, a vehicle for" the "delivery
10 of nicotine, designed to deliver the nicotine in a
11 generally acceptable and attractive form."

12 You would agree with that last statement;
13 correct?

14 A. I -- I don't know that I would agree with it
15 as -- as you're -- as I get the feeling you're trying
16 to characterize it. I've -- I've tried -- I've tried
17 to publish my position on these issues in the peer
18 reviewed literature. It's out there for all to
19 read. I've made numerous presentations and -- and
20 given interviews, et cetera.

21 There is a role for nicotine in tobacco use.
22 I've documented that in my -- in my literature.
23 People smoke. They do absorb nicotine. There is
24 some mild pharmacology, physiological effect
25 associated with that. I've addressed that in my

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 papers. I've tried to identify what I think that
2 role is, and this gives me the impression that is the
3 only reason why people smoke, and I've tried to offer
4 alternative reasons.

5 Q. Nicotine's a primary reason people smoke;
6 correct, sir?

7 A. I don't know that it's a primary reason people
8 smoke. We published a study in nineteen ninety --
9 well we made a presentation at the 1994 meeting in --
10 in Montreal and published a paper subsequent to that
11 that tried to look at some of these issues, the role
12 the mild pharmacology plays versus the other roles,
13 and we could not distinguish sensory acceptance from
14 mild pharmacology as -- as we assumed were reflected
15 by blood levels of nicotine.

16 Q. You understand that people smoke and obtain a
17 certain plasma level of nicotine relatively
18 consistently; correct, sir?

19 A. We've done a lot of work over the last 16-plus
20 years and really the last 13 or 14 where we had the
21 ability to measure nicotine concentrations in body
22 fluids and blood. I would say that people smoke
23 differently at different times. The one thing
24 that -- or I think I've learned a number of things.
25 People -- there's a very wide range of nicotine that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 is absorbed from cigarette smoke across people. If I
2 give the same person different yields of cigarette,
3 there seems to be some correlation as to how much
4 nicotine is absorbed. It's positive. It's
5 significant. It's not perfect. If -- if anything, I
6 think the -- the -- the wide range that I see across
7 people who smoke is -- is --

8 Q. But --

9 But as to one individual person, what your work
10 has found is that each individual person seems to
11 smoke for a certain level of nicotine themselves;
12 correct?

13 MS. McDOLE: Objection --

14 A. No.

15 MS. McDOLE: -- to the form of the
16 question, mischaracterization of testimony.

17 MR. O'FALLON: Well it's not. It's not a
18 mischaracterization of his testimony.

19 A. What I -- no, what I -- what I tried to say was
20 that people smoke differently at different times. I
21 think -- I think people smoke for a number of
22 different reasons. People do absorb nicotine. Does
23 a given person seem to have a -- a level of where --
24 that they smoke to and then stop? I think -- I think
25 that -- well, I think the answer there is the -- what

1 I was trying to say about the correlation. There is
2 a -- a positive-going correlation between people who
3 switch cigarettes, different kinds of cigarettes for
4 an individual.

5 Q. There is a positive correlation --

6 MS. McDOLE: Let him finish.

7 MR. O'FALLON: Well I'm not understanding
8 this. I'm not understanding this issue at all, and
9 so I'm going to move to strike it. Let's -- let's
10 answer my question.

11 Q. Do people or do people not smoke to achieve a
12 certain level of nicotine, an individual person?

13 A. Not every time --

14 MS. McDOLE: Do you want to finish?

15 A. -- I do not think so.

16 MS. McDOLE: Do you want to finish your
17 answer?

18 THE WITNESS: I would like -- yeah, I'm
19 trying to explain it, and I -- I'm not doing very
20 good.

21 MR. O'FALLON: Well I'd like you to answer
22 my question.

23 MS. McDOLE: Just go ahead, John, finish
24 your answer.

25 THE WITNESS: I -- I am trying to answer

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 your question, sir.

2 A. There seems to be -- I -- in my -- in my work,
3 in what I have done over the years, there seems to me
4 an individual has a certain range, if you will, of
5 smoking behaviors that he uses at different times
6 that I have referred to in the past as his comfort
7 zone. He's comfortable working within that range. I
8 think if that person gets outside that range,
9 particularly in -- in blood levels of nicotine, that
10 is not something they want. I think that range
11 shifts -- may shift over time.

12 There was another point I -- and -- and I felt
13 this way for a long time. I would say that about a
14 year and a half, two years ago Jed Rose made a
15 presentation at Duke that made me sort of rethink
16 that position. He showed that smokers were
17 comfortable in wider ranges and when he substituted
18 different sensory stimulants in the smoke.

19 So I don't know the answer. That people smoke
20 to a given number every time, I don't think that's
21 true.

22 MR. O'FALLON: Well I move to strike
23 everything but "I don't know the answer. That people
24 smoke to a given number every time, I don't think
25 that's true."

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. McDOLE: Objection to the motion.

2 Q. This memo goes on to state that, quote, "Our
3 Industry" then is "based upon" the "design,
4 manufacture and sale of attractive dosage forms of
5 nicotine, and our Company's position in" the
6 "Industry is determined by our ability to produce
7 dosage forms of nicotine which have more overall
8 value, tangible or intangible, to the consumer than
9 those of our competitors"; correct?

10 MS. McDOLE: It's a mischaracterization of
11 the way it's written. Objection. It says "Our
12 Industry is then based"

13 MR. O'FALLON: Well let's go back and
14 reread then. I know you're very, very touchy about
15 words.

16 Q. Quote, "Our Industry is then based upon design,
17 manufacture and sale of attractive dosage forms of
18 nicotine, and our Company's position in our Industry
19 is determined by our ability to produce dosage forms
20 of nicotine which have more overall value, tangible
21 or intangible, to the consumer than those of our
22 competitors." That's what the document states;
23 correct?

24 A. That's what it says, yes.

25 Q. On page two, if you look there -- actually page

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 three of the document, the first full paragraph, he
2 then states, quote, "Happily for the tobacco
3 industry, nicotine is both habituating and unique in
4 its variety of physiological actions, hence no other
5 active material or combination of materials provides
6 equivalent," quote, "'satisfaction,'" end quote;
7 correct?

8 A. That's what it states, yes.

9 Q. Did you tell the public that in your
10 advertisement on nicotine addiction or, rather,
11 whether cigarettes are addictive?

12 A. Again I think I've -- I've published and in the
13 advertisement here tried to -- the company tried to
14 capture my position, a much more detailed and ex --
15 expansive explanation of this, and again I don't
16 think thoughts of one -- the one person thinking --
17 perhaps thinking out loud should constitute requiring
18 taking out an ad.

19 Q. Have you ever stated in your literature
20 that "... nicotine is both habituating and unique in
21 its variety of physiological actions, hence no other
22 active material or combination of materials provides
23 equivalent 'satisfaction'?"

24 A. I --

25 Q. Have you ever stated that?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I have not stated that, no.

2 Q. I'd like to show you a document that's been
3 marked as Plaintiffs' Exhibit 1058.

4 THE WITNESS: What do I do with these?

5 MS. McDOLLE: You can just put them aside.

6 Q. Have you seen this document previously?

7 A. I'm not sure.

8 Q. Why don't you look at page two. There's only
9 really one sentence I want to ask you about.

10 A. Page --

11 Q. Two, Bates stamp number --

12 A. Roman numeral --

13 Q. -- 3466, Roman numeral III, "SMOKE pH AND 'FREE'
14 NICOTINE." The first sentence states, quote, "In
15 essence, a cigarette is a system for delivery of
16 nicotine to the smoker in attractive, useful form."
17 Do you see that statement?

18 A. Yes, I see it.

19 Q. And do you agree with it?

20 A. Again I think that's the same statement you --
21 you just asked me about. I -- I think that's a -- a
22 very narrow view of smoking. I would not agree with
23 that as -- as I think it's characterized there.

24 Q. Let me show you a document that's been marked as
25 Plaintiffs' Exhibit 1085. This is another internal

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 R.J. Reynolds Tobacco document, and it says it's a --
 2 it's a talk delivered to the RJR Tobacco Company
 3 management June 20 -- it appears to be 20 sometime,
 4 1974 and RJR Tobacco International management
 5 August 4th, 1976 by Murray Senkus.

6 You know who Murray Senkus is, don't you, sir?

7 A. Yes, I know Dr. Senkus.

8 Q. He was the onetime head of research at R.J.

9 Reynolds; correct?

10 A. I believe that's true.

11 Q. Let's look to page four of this document. And

12 again, this was a document presented to top

13 management; correct?

14 A. It says RJR Tobacco Company management and

15 Tobacco International management. I don't know what

16 level that that refers to.

17 Q. This would appear to be more akin to the

18 company's position, though; correct, sir?

19 A. I'm sorry, I --

20 MS. McDOLLE: Objection to the form.

21 A. -- I don't know that I know that. What -- I'm

22 sorry, what page did you ask me about?

23 Q. Page four, Bates number 50152 5358.

24 A. Yes, sir.

25 Q. The first full sentence, it states, quote,

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 "Without any question, the desire to smoke is based
2 on the effect of nicotine on the body"; correct?

3 A. That's what it says, yes.

4 Q. And this is an internal R.J. Reynolds document;
5 correct?

6 A. That appears to be true, yes.

7 Q. And at this time in 1976, R.J. Reynolds had not
8 stated that publicly; correct?

9 A. I don't know if they had or not.

10 Q. Well, sir, you're here on behalf of the company
11 to speak about the public statements concerning
12 addiction, so is it your testimony as a
13 representative of R.J. Reynolds that you can't tell
14 me one way or the other whether in 1976 RJR was
15 telling the public that, quote, "Without any
16 question, the desire to smoke is based on the effect
17 of nicotine on the body"?

18 MS. McDOLLE: Objection, asked and
19 answered.

20 A. I don't know the answer to -- to whether they
21 have done that or not -- had done that. That was
22 before my time.

23 MR. O'FALLON: I'd like to mark this next
24 document. This is a document that's Bates stamp
25 numbered 50283 5325 through 5337. I had this

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 document copied in the fashion in which it was
2 produced. It appears to be out of order.

3 (Plaintiffs' Exhibit 1114 was marked
4 for identification.)

5 BY MR. O'FALLON:

6 Q. Would you please take a look at Plaintiffs' 1114
7 and tell me if you recognize this document.

8 A. This -- this -- this appears to be one of the
9 documents I reviewed the other day in -- in
10 preparation for this.

11 Q. I would suspect it is. Do you know anything
12 more about the document?

13 A. It says transparencies. It's -- I would -- I
14 would surmise it would be a -- a presentation. I do
15 not know to whom the presentation was made or -- it
16 says "BIOBEHAVIORAL ASPECTS OF SMOKING" on page
17 number one. You're right, it is out of order I see
18 now. Someone in the Biobehavioral Division.

19 Q. And you were in that division; correct?

20 A. That's correct.

21 Q. As a matter of fact, on page four of the
22 document, Bates stamp number 50283 5330, it refers to
23 Robinson's Figures 6 and 7, doesn't it, sir?

24 A. Yes.

25 Q. So it appears that you had some role in this

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 paper or this presentation; correct?

2 MS. McDOLE: Objection to the form.

3 A. It's referring, as you say, to Robinson's
4 Figures 6 and 7. That would suggest that I didn't
5 make the presentation and perhaps someone else did.

6 Q. Do you recall making this presentation?

7 A. No, sir.

8 Q. There's also some questions and answers at the
9 end, biobehavior review questions, so it appears that
10 you're making this in some kind of a teaching
11 function internally; correct?

12 MS. McDOLE: Well objection to the
13 assumption that Dr. Robinson is making this.

14 Q. Well someone in the Biobehavioral Division
15 appears to be making this; correct?

16 A. I -- that would be my understanding. I don't
17 know that.

18 Q. Okay.

19 A. But that would seem to be. And I'm sorry, I
20 don't find the questions that you're referring to.

21 Q. Page number Bates number 50283 5336.

22 A. Yes, sir, "Human" -- "Human Smoking
23 Characteristics."

24 Q. Well at the top it says "BIOBEHAVIORAL REVIEW
25 QUESTIONS"; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I see, yes.

2 Q. And then it lists some questions, so it appears
3 as though the Biobehavioral Division is giving some
4 kind of a presentation and then asking review
5 questions after the presentation; correct?

6 MS. McDOLE: Objection to the assumption.

7 A. That seems -- that seems to be the case. I
8 don't know that for -- for a fact.

9 Q. Okay.

10 A. That -- that's what it appears to be.

11 Q. Let's go to page one of the document, which is
12 Bates number 50283 5327.

13 A. Yes, sir.

14 Q. "BIOBEHAVIORAL ASPECTS OF SMOKING," that's the
15 title; correct?

16 A. Yes, sir.

17 Q. It states, quote, "The Biobehavioral R&D group
18 here at R.J. Reynolds is primarily concerned with
19 the" question "of why and how people smoke";
20 correct?

21 MS. McDOLE: Objection to the misreading.

22 MR. O'FALLON: Okay. Let me do it again.

23 Q. "The Biobehavioral R&D group here at R.J.
24 Reynolds is primarily concerned with the questions of
25 why and how people smoke"; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes, sir, that's what it says.

2 Q. And you would agree with that; correct?

3 A. I would -- I would say that was a charge of the
4 biobehavioral group and I would say that's still the
5 charge of the group I lead now, the psychophysiology
6 group, trying to understand how and why people
7 smoke.

8 Q. Well let's see what the biobehavioral group has
9 to say about why and how people smoke. Let's look at
10 page five of the document, Bates numbers 50283 5331.
11 Are you there?

12 A. Yes, sir.

13 Q. Let's look at the second full paragraph. It
14 states, quote, "While numerous people have suggested
15 that smoking has a number of rewarding properties
16 such as taste, tranquilization, distraction from" --
17 "distraction from unpleasant mental states, something
18 to do with the hands, and a means of pacing one's
19 mental and social tempos, the fact remains that
20 smokers do not continue to smoke unless their
21 cigarettes contain nicotine"; correct?

22 A. That's what it states, yes.

23 Q. It also states that, quote, "Most major
24 researchers and research groups studying the
25 motivations for and effects of smoking have concluded

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that nicotine is probably essential for the" main --
2 "maintenance of smoking"; correct?

3 A. That's what it says, yes.

4 Q. It's basically what's been said at R.J. Reynolds
5 since the early '70s in Dr. Teague's memos; correct?

6 MS. McDOLLE: Objection to the form of the
7 question.

8 A. I'm -- I'm much more familiar with this than I
9 am with -- with Dr. Teague's writings. I would say
10 that this is a shorthand or a -- a quick summary of
11 what I've tried to expand upon over the years in
12 understanding how and why people smoke. As I've
13 pointed out, there is a role for nicotine in tobacco
14 smoking. I think that refers to why tobacco is
15 made -- is used to make cigarettes instead of oak
16 leaves.

17 I would fundamentally disagree with the
18 characterization of what the role of nicotine in
19 tobacco is that the nicotine addiction proponents
20 state. I don't think that's correct. I've learned a
21 lot more since this nineteen -- early, I would
22 guess --

23 Q. You don't know when this was written; correct?

24 MS. McDOLLE: Objection to the
25 interruption.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yeah, I do not. I do not know when it was. I
2 would say that some of that I would still hold true;
3 some my research position and my thinking has changed
4 over the many years.

5 Q. R.J. Reynolds could produce a cigarette with no
6 nicotine in it; correct?

7 A. I'm not an -- I'm not an engineer or -- or -- or
8 a product developer. If -- if the cigarette contains
9 tobacco, I would say that the only -- or the best
10 attempt I saw at making a cigarette with no nicotine
11 was manufactured by Philip Morris, the Next or -- or
12 the Merit Free-type cigarette. My understanding is
13 it's not technically feasible to remove 100 percent
14 of -- of nicotine from tobacco, but again I -- I
15 don't work in processing or chemistry. I don't know
16 that.

17 Q. You --

18 A. You can make very -- that was a very
19 low-nicotine-yield cigarette.

20 Q. In fact, you can remove virtually all of the
21 nicotine from -- from cigarettes; correct?

22 A. Again I -- I -- I have the impression you cannot
23 remove it all. I don't know how low it's possible to
24 go.

25 Q. But the problem is, from the tobacco industry's

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 point of view, if you take out the nicotine, people
2 won't smoke the product; correct?

3 MS. McDOLE: Objection to the form of the
4 question.

5 A. I think if -- if -- if -- what -- what we saw
6 with the Merit Free and the Next experience is if
7 you -- if you take the nicotine out of the cigarette,
8 number one, immediately it tastes different to
9 people. When I refer to taste, I should -- I should
10 explain to you that this is not necessarily classical
11 physiological taste as salt, sweet, bitter, sour. I
12 think smokers use the word "taste" to refer to the
13 entire sensory experience of drawing the smoke into
14 their mouth, into their -- into their lungs.

15 So immediately it -- it tastes different. That
16 cigarette did not succeed, as I understand. It
17 was -- was not successful in the marketplace.

18 Q. Well let me just repeat --

19 A. So -- and I'm sorry. In my -- I -- I think my
20 work has shown over the years that there is a certain
21 percentage of people who do not inhale cigarette
22 smoke, and therefore there are smokers who do not
23 inhale. I do not think they get any -- or nearly any
24 pharmacological effects from smoking.

25 If you could take nicotine out of cigarettes and

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 replace the sensory characteristics that are missing,
2 I think some of those people would continue to smoke
3 those cigarettes, but I -- I don't know that. I have
4 no way of -- some of Jed Rose's work points in that
5 area where he reports people report smoking low- or
6 no-nicotine cigarettes with sensory replacement as --
7 as satisfying or nearly as satisfying as -- as the
8 usual brand. So I don't know that.

9 Q. Well certainly you can replace one drug with
10 another, and R.J. Reynolds has looked at nicotine
11 analogs; correct?

12 A. No, I didn't --

13 MS. McDOLE: Objection to the --

14 A. -- I didn't say a drug.

15 MS. McDOLE: Objection to the question.

16 Q. Well I'm sorry, I --

17 A. Jed -- Jed -- Jed has done work replacing
18 sensory stimulants using things like citric acid, for
19 example, to imitate the -- what's referred to as the
20 common chemical sense, irritancy of -- of smoking
21 that smokers seem to enjoy.

22 Q. Well let's see what your own department had to
23 say about taste, and again what your department said
24 was, quote, "While numerous people have suggested
25 that smoking has a number of rewarding properties

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 such as taste, tranquilization, distraction from
2 unpleasant mental" stress, "something to do with the
3 hands, and a means of pacing one's mental and social"
4 tempo, "the fact remains that smokers do not continue
5 to smoke unless their cigarettes contain nicotine";
6 correct?

7 MS. McDOLE: Objection to the misreading.

8 A. Again I would say that if you take nicotine out,
9 immediately the taste changes. Given -- and -- and
10 it becomes a less enjoyable cigarette to the -- to
11 the smoker. The question is whether they would smoke
12 a cigarette that provided the same sensory
13 stimulation, the same sensory cues that did not
14 contain nicotine. I think there are some people who
15 would smoke those.

16 Q. What percentage --

17 A. I think -- I think, as -- as written here, it
18 was not possible to -- to or -- or no one knew how to
19 create a cigarette that tasted the same without
20 nicotine in it.

21 Q. What percentage of people do not inhale, sir?

22 A. From -- I don't have a -- a hard number on
23 that. It's -- my estimate would be, I think, 10 to
24 15 percent is -- is what I've said in the past.

25 Q. The document also goes on to state that "Most

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 major researchers and research groups studying the
2 motivations for and effects of smoking have concluded
3 that nicotine is probably essential for the
4 maintenance of smoking"; correct?

5 A. That's what it says, yes.

6 Q. So to the extent you disagree with that, you
7 would basically be in the minority; right?

8 A. I would say that, as I've tried -- as I've tried
9 to in -- in my writings, that the role -- there is a
10 role for nicotine in tobacco use. Some of that role
11 is related to the mild pharmacology that accompanies
12 tobacco smoking. For those people, those are
13 important benefits that they achieve from smoking,
14 and if you remove nicotine and you remove those
15 benefits that they enjoy, I think you would make it
16 less enjoyable, less -- fewer people would do it.

17 Q. Do you agree or disagree with the statement I
18 just read you, sir?

19 A. I -- I've tried to characterize how I agree and
20 disagree with it just now.

21 Q. I'm still not clear. Do you agree with it or do
22 you disagree with it?

23 MS. McDOLLE: Objection, asked and
24 answered.

25 A. I don't know that I can answer it differently

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 than I just did. I'm sorry.

2 Q. You can't answer that question?

3 MS. McDOLE: Well he answered it.

4 Objection to the form.

5 A. I've tried to answer. I don't think I can

6 answer it "yes" or "no." I've tried to explain my

7 position on that.

8 Q. You just find it too complex a question, huh?

9 MS. McDOLE: Objection to the form of the
10 question.

11 A. This --

12 MS. McDOLE: He answered the question.

13 A. -- is a very complex area and -- and it's

14 sometimes difficult to give "yes" or "no" answers.

15 Q. Apparently your group forgot to put all that
16 complexity down in this document, huh, sir?

17 MS. McDOLE: Objection to the form of the
18 question.

19 A. I think the group under -- as it existed

20 understood that. I mean, that's what we dealt with

21 every day, trying to understand why and how people

22 smoke. We -- we -- we still don't have the answers.

23 Q. But when making your presentation to people who
24 weren't in your group, you didn't have to go through
25 all those complexities like you found it necessary to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 go through today; correct?

2 MS. McDOLE: Objection to the assumption.

3 A. We did not go through those. I'm trying to
4 explain it to you as I understand it today.

5 Q. And apparently you think that the people of the
6 state of Minnesota need much more explanation than
7 the people that work at R.J. Reynolds Tobacco;
8 correct?

9 MS. McDOLE: Objection to the form of the
10 question. You asked for the deposition.

11 A. I'm here, as I understand, representing the
12 company, as you pointed out earlier. I'm trying to
13 give you my best understanding of -- of the issues
14 that you're asking me about as I -- as I know them to
15 be today.

16 Q. Let's look at the previous page; I believe it's
17 page four. This is called "PLASMA NICOTINE IN
18 INHALING AND NON-INHALING SMOKERS." Now that's an
19 area you worked in; correct?

20 A. Yes, sir.

21 Q. It states, quote, "The metabolic and excretory
22 processes give nicotine" the "half-time of
23 elimination," parenthetical, "(similar to the
24 half-life of a radioactive substance)," end
25 parenthetical, "of 20 to 30 minutes"; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. That's what it states, yes.
- 2 Q. And that's your understanding; correct?
- 3 A. I was -- that -- that parentheses is to describe
- 4 the term "half-life."
- 5 Q. And I understand that. I wasn't suggesting that
- 6 nicotine was a radioactive substance, and --
- 7 A. That --
- 8 Q. -- I think it's clear from the document.
- 9 Correct?
- 10 A. That nicotine has a half-life in the body, yes,
- 11 of 20 to 30 minutes.
- 12 Q. Okay.
- 13 A. That was my understanding at that point in
- 14 time.
- 15 Q. Okay. So you agree with that statement?
- 16 A. I think later -- further work, it -- it -- as we
- 17 were able to expand our techniques and did more work
- 18 in this area, I think people might say the half-life
- 19 has increased. Some people now say 60 to -- to 120
- 20 minutes.
- 21 Q. It says "Pharmacologically speaking, a drug or
- 22 compound is said to be completely removed from the
- 23 body after 4 half-lives"; correct?
- 24 A. That's what it says, yes.
- 25 Q. It then goes on to state, quote, "This

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 relatively short half-life of nicotine has been
2 implicated in the frequency of cigarette smoking and
3 has been used to support the idea that smokers smoke
4 to maintain a constant level of nicotine in the
5 body"; correct?

6 A. That's what the literature was stating at that
7 time, yes.

8 Q. Doctor, you would agree that smokers need to
9 build up, especially beginning smokers need to build
10 up, tolerance to nicotine; correct?

11 A. Okay. I wonder -- I wonder if we could just go
12 back and -- and read the -- read the next sentence
13 that --

14 Q. If your attorney wants to do that with you later
15 on, then she can do it with you later on. In the
16 meantime, it would be helpful to me if you would just
17 answer my questions.

18 A. Yes, sir.

19 MS. McDOLLE: I'll give you the chance that
20 Mr. O'Fallon won't give you, John.

21 MR. O'FALLON: I'm sure you will. It's
22 your position and your place to represent your
23 company, and I'm sure you'll do that to the utmost of
24 your extent.

25 THE WITNESS: I wonder if I could get

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 another cup of coffee.

2 MR. O'FALLON: Sure.

3 THE REPORTER: Off the record, please.

4 (Recess taken.)

5 BY MR. O'FALLON:

6 Q. Doctor, there was a question pending when we
7 broke, and I'm going to reread that or restate that
8 question.

9 Doctor, would you agree that smokers need to
10 build up, especially beginning smokers need to build
11 up, tolerance to nicotine?

12 A. If -- if you're referring to some of the effects
13 that beginning smokers seem to get when they -- when
14 they first start to smoke, such as light-headedness,
15 things like that, some people have postulated that
16 that's a -- that's a form of -- of tolerance. I
17 don't know if that's true or not. I think very
18 likely there -- there's also a learning component
19 that goes along with smoking cigarettes, first
20 starting smoking cigarettes, that when you learn what
21 the effects are, you -- it's not -- it's not a
22 physiological tolerance. It's more of an expectation
23 kind of thing.

24 I would -- I would say I don't know how you
25 separate those two.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Nausea and vomiting can also be associated with
2 nicotine ingestion; correct?

3 A. Those are side effects that can occur with
4 higher levels of nicotine, and those -- those can
5 occur in smokers of -- of many years of -- of
6 high-tar/nicotine-yield cigarettes if they -- as I
7 tried to state, I was describing a little bit before
8 about what I called a comfort zone -- they get
9 outside that. They can still experience those
10 effects, so that's why I think physiological
11 tolerance in that sense is unlikely.

12 Q. So basically beginning smokers need to smoke to
13 build up a tolerance until they find their own dose
14 or what you would call comfort-level range; correct?

15 MS. McDOLE: Objection to the
16 mischaracterization.

17 A. I don't -- I don't think I said that.

18 Q. That's true, though, isn't it?

19 A. No, I don't -- I don't -- I think that's -- as
20 you've characterized it, I would disagree with that.

21 Q. Okay. In any event, since 1972 R.J. Reynolds
22 knew that the beginning smoker had to build up a
23 tolerance for nicotine; correct?

24 MS. McDOLE: Objection to the form of the
25 question.

1 A. If you have something you'd like me --

2 Q. Sure.

3 A. -- to read --

4 Q. Why don't you go back to Plaintiffs'

5 Exhibit 1057. If you want to look on page four, the

6 last three words on page four over to page five, and

7 that's Bates number 50091 5686 to 87. It says,

8 quote, "Indeed, the first smoking experiences are

9 often unpleasant until a tolerance for nicotine has
10 been developed"; correct?

11 A. That's what it says, yes.

12 Q. And this is a internal RJR document from

13 approximately 1972; correct?

14 MS. McDOLE: Objection to the form of the
15 question.

16 A. Again this is -- appears to be someone's
17 thinking. I think you can find that certainly people
18 who had hypothesized that in -- in the literature at
19 that time. I think people still talk about that in
20 the literature.

21 What I've tried to explain as my position is
22 that I don't know how you separate that, is tolerance
23 from learning that occurs when beginning smokers
24 begin to smoke. They get these mild pharmacological
25 effects. Many they seem to get every time they

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoke, so I don't know the physiological tolerance as
2 I think the -- the common man understands it would
3 apply.

4 Q. You mean smokers continue to smoke even though
5 every time they smoke they're light-headed, nauseous
6 and dizzy?

7 A. No, I think those in particular -- that's the
8 point I'm trying to make -- those in particular may
9 very well be susceptible to learning and that they
10 learn what the physiological effects are and they
11 don't get those any -- any longer.

12 Q. But apparently some smokers get those, I think
13 you said, every time they smoke.

14 A. No, no.

15 MS. McDOLLE: Objection to the
16 mischaracterization.

17 A. If they get outside what they normally ingest
18 from a cigarette, they can. That's why I think
19 physiological tolerance is -- is not a good
20 explanation.

21 Q. If they get outside their -- I believe you call
22 it the comfort zone; correct?

23 A. What I've referred to as the comfort zone.

24 Q. What other may -- people may call a dosage
25 level; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. McDOLE: Objection to the form.

2 A. That's what I call it.

3 Q. But other people call it a dosage level?

4 A. Others may.

5 MS. McDOLE: Objection to the form.

6 Q. Including other people in your own profession;

7 correct?

8 A. Others may, yes.

9 Q. You know for a fact others do; correct?

10 MS. McDOLE: Objection --

11 A. I've certainly --

12 MS. McDOLE: -- to the form.

13 Q. Excuse me?

14 A. I've certainly seen it in the literature.

15 Q. Now you would agree that upon ceasing to smoke,

16 a smoker experiences some withdrawal discomfort;

17 correct?

18 MS. McDOLE: Objection to the form of the

19 question.

20 A. I think the area of withdrawal and smoking

21 cessation is -- is very complicated, very -- very

22 nebulous. I do not think that classic physiological

23 withdrawal accompanies cigarette smoking, certainly

24 not in a large majority of smokers.

25 Now, when people stop smoking, can they

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 experience -- again I think in 1964 the -- the
2 Surgeon General described it quite accurately -- a
3 gamut of mild symptoms, such as anxiety,
4 restlessness, difficulty concentrating, things along
5 those lines? I think one of the -- one of the
6 difficulties there is that if you look at two
7 population -- or if you look at populations, large
8 groups of smokers versus nonsmokers, you find
9 different psychological variables at work, different
10 characteristics, so that smokers as a group seem to
11 have higher levels of anger, anxiety, difficulty
12 concentrating, these -- these things, so that when
13 they stop smoking, what you may be seeing is these
14 psychological traits coming through that this person,
15 that's what they're normally like if they would not
16 be a smoker. So I don't know how you differentiate
17 those.

18 Q. So what you're saying is smoking alters their
19 normal personality?

20 A. I -- I don't think -- I don't think it -- it
21 certainly doesn't alter their personality in -- in a
22 negative sense. I think it may help them relax, help
23 them concentrate, help relieve some stress, help them
24 cope. This is -- precisely many of the studies that
25 we've conducted in our laboratories and have

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 published in the literature deal with these -- with
2 these aspects of -- of why people smoke, stress --
3 stress reduction, anxiety relief, performance, small
4 increases in simple motor performance, learning,
5 memory, attention-type tasks.

6 Q. So it's your testimony that nicotine affects a
7 smoker's normal personality, changes it?

8 MS. McDOLE: Objection,
9 mischaracterization.

10 A. I -- I -- I don't know that it changes it from
11 normal, no. I mean, I don't -- I'm not sure what
12 your -- what your point is.

13 Q. I'm just picking up on what you testified to.

14 MS. McDOLE: Objection to the
15 mischaracterization.

16 Q. Well let's go back and let's see if we can agree
17 that at least R.J. Reynolds knew that smokers upon
18 ceasing to ingest cigarette smoke experience
19 withdrawal discomfort.

20 A. Okay. I'm sorry. Once more, please.

21 MS. McDOLE: Is that a question?
22 Objection.

23 Q. Can we agree that R.J. Reynolds knew that
24 smokers upon ceasing to ingest cigarette smoke
25 experience withdrawal discomfort?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. McDOLE: Objection to the form of the
2 question.

3 A. Again I -- I don't know that I would
4 characterize it as withdrawal. The -- the -- the
5 literature, certainly the Surgeon General's report,
6 talked about these mild gamut -- or gamut of mild
7 symptoms, and -- and I've certainly talked about that
8 in my writings.

9 Q. Okay. You've referred a couple of times to the
10 1964 Surgeon General's report; correct?

11 A. Yes, sir.

12 Q. You understand that that report has been
13 superseded by a 1988 Surgeon General's report;
14 correct?

15 MS. McDOLE: Objection to the
16 misrepresentation.

17 A. Well I don't know about superseded. That --
18 that's exactly -- that's exactly the -- the crux of
19 the issue I've tried to raise in many of my writings,
20 is that some of the -- very much of the
21 characterization of cigarette smoking and nicotine
22 that I think are valid and are key distinction
23 between addicting drugs were highlighted, clearly
24 stated in the 1964 report. These distinctions have
25 been lost in the '88 report, and in many respects I

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 think the '64 report is a much more clearly defined,
2 scientifically testable representation of cigarettes
3 and -- and -- and nicotine.

4 Q. And of course it's in the cigarette industry's
5 best interests to trumpet that position; correct?

6 MS. McDOLE: Objection to the form.

7 A. I -- that's the position, I believe. I think
8 that's clearly stated, scientifically testable, well
9 defined. It allows me to make measurements that
10 compare the effects of different compounds. I think
11 it clearly points to key differences between things
12 like caffeine in coffee and nicotine in cigarettes
13 and addicting drugs, and I believe that's the correct
14 position and that's what it should be.

15 Q. But the fact of the matter is if you went in
16 tomorrow and said that you wanted to publish an
17 article stating that cigarette smoking was addictive,
18 you'd probably be fired; correct?

19 MS. McDOLE: Objection to the form.

20 A. I -- I don't know -- I don't know that I
21 would -- I don't know that I would be fired. If --
22 if -- if I wanted to go in and publish an article
23 that said nicotine -- the effects of smoking and
24 nicotine were like heroin and cocaine, I -- I should
25 be fired. That's not what I believe. That's not

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what I've published. That's not the position I've
2 tried to take.

3 If that were true, I don't think we should be
4 selling cigarettes; I don't think we should be
5 allowed to be selling cigarettes.

6 Q. Okay. Again let's come back to this notion of
7 withdrawal discomfort, and I'm going to have marked
8 as an exhibit a document that's Bates stamp numbered
9 50282 4762 to 4800.

10 (Plaintiffs' Exhibit 1115 was marked
11 for identification.)

12 BY MR. O'FALLON:

13 Q. Do you recognize this document?

14 A. This appears to be one of the documents that was
15 in the stack I -- I looked over the other day.

16 Q. You discussed those documents with your
17 attorneys?

18 A. Only to the extent that they said these were, I
19 think they said, predesignated documents. I was
20 signed to confidentiality agreements not to discuss
21 these, what I saw, with people, and I was to look
22 them over.

23 Q. This is an internal RJR document; correct?

24 A. I believe so, yes.

25 Q. Is this a document that would have come out of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 your department?

2 A. Not while -- not while -- not my department as
3 it exists today. This --

4 Q. Then let's go back and ask -- let me ask a quick
5 question about that.

6 The Biobehavioral --

7 MS. McDOLLE: Objection to the
8 interruption.

9 Q. -- Division was established when?

10 A. I joined biobehavioral in 1981, June of 1981. I
11 do -- I do not know exactly when. My impression was
12 it was perhaps a year old at that -- at that time. I
13 don't know exact dates.

14 Q. Is it your testimony that this document predates
15 your arrival?

16 A. No, I would expect not.

17 Q. Okay. So this document was generated sometime
18 while you were with the company?

19 MS. McDOLLE: Objection to the speculation.

20 A. I -- I believe that's true.

21 Q. And it would have been generated by your
22 department?

23 A. Again I didn't head up the biobehavioral
24 department at that --

25 Q. I'm not suggesting you did.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yeah, no, but --

2 Q. But you were a member of it; correct?

3 MS. McDOLE: Go ahead and finish what you
4 were saying, John.

5 A. By a member of that department, that would be
6 my -- that -- yes, I would expect that that's --
7 that's true, yes.

8 Q. Okay. And understand when I said when you were
9 a member of that department, I didn't suggest that
10 you were heading up that department.

11 A. Okay, I'm sorry.

12 Q. Did you have a part in drafting this document?

13 A. Some -- some of the subject matter would be in
14 my area of -- of study and expertise. I do not
15 recognize as -- as -- as these being any overheads
16 that I would draw up. It does not look like anything
17 I prepared on these slides or graphics here.

18 Q. Is it your testimony that these are slides or
19 graphics, basically a compilation of slides and
20 graphics?

21 A. That would -- that's what I would surmise.
22 That's what they would appear to be with this
23 large -- with the large writing and the -- to be
24 presented as an overhead or a slide.

25 Q. Let's go to page 50282 4765.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Some of -- some of my pages are not numbered.

2 Okay.

3 Q. This is entitled "GENERAL PHYSIOLOGICAL AND
4 PSYCHOLOGICAL EFFECTS OF SMOKING/NICOTINE OBSERVED IN
5 MAN"; correct?

6 A. Yes, sir.

7 Q. And under "PSYCHOLOGICAL," for "REWARD" it says
8 that it increases pleasure; correct?

9 A. Yes.

10 Q. Increases stimulation; correct?

11 A. That's correct.

12 Q. And decreases withdrawal discomfort; correct?

13 A. That's what it says.

14 Q. And of course the reverse would also be true.

15 Stopping nicotine ingestion would increase withdrawal
16 discomfort; correct?

17 MS. McDOLE: Objection to the form.

18 A. As I said, that -- that's not a slide I
19 prepared. I don't know if the author would -- would
20 agree with that or not.

21 Q. That makes sense, doesn't it?

22 MS. McDOLE: Objection to the form.

23 A. That would -- that would follow if that's what
24 the author was trying to say.

25 Q. Well, that's what the author --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Again I think --

2 Q. -- did say, didn't he?

3 A. I think -- I think this represents or what it
4 looks like it represents to me is a summation of
5 literature at that time.

6 Q. Move --

7 A. That would be my -- that would be my
8 understanding.

9 Q. Move to strike as nonresponsive.

10 The author did say decrease withdrawal
11 discomfort; correct?

12 A. Yes, he did.

13 MS. McDOLLE: Objection to the motion.

14 Q. The author also goes through the physiological
15 effects of nicotine; correct?

16 A. There's a column that -- titled "PHYSIOLOGICAL,"
17 yes.

18 Q. Apparently nicotine increases and apparently can
19 decrease blood pressure; correct?

20 A. Yes, that's my understanding, is that -- well
21 let me -- let me modify that in that saying I think
22 cigarette smoking in the studies we do has been shown
23 to increase heart rate slightly, particularly in --
24 this is particularly measurable in persons who are
25 quiet, resting, haven't smoked for a while. And

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that's an acute response and -- and we published a
2 paper in Psychopharmacology where we said that
3 appeared to be related to the nicotine absorbed
4 from -- from cigarette smoke.

5 The decrease in blood pressure, my
6 understanding -- and I -- I did not prepare this
7 document. My understanding -- and -- and perhaps
8 Dr. Simmons would be better to -- to answer that. My
9 understanding is that smokers as -- as a group seem
10 to have lower blood pressure than nonsmokers. I
11 don't know if that's what that refers to.

12 Q. In any event, nicotine increases the heart rate
13 according to this document; correct?

14 A. According to the document, yes. Now again
15 smoking/nicotine, I think that's a key -- a key point
16 to be made, that sometimes -- that is a difficulty
17 with -- with some of the literature. People talk
18 about measuring responses to cigarette smoking and
19 then immediately assign it to nicotine when that may
20 or may not be the case, so --

21 Q. What other pharmacologically active substance --

22 MS. McDOLE: Go ahead and finish.

23 Q. What other pharmacolog --

24 MS. McDOLE: Objection to the
25 interruption.

1 Q. What other pharmacologically active substances
2 are contained in cigarette smoke?

3 MS. McDOLE: Do you want to finish your
4 prior answer?

5 THE WITNESS: I've forgotten.

6 MS. McDOLE: Here, you can see it on the
7 screen.

8 THE WITNESS: I've forgotten what I was
9 going to say.

10 MS. McDOLE: Here, wait a minute.

11 I'm sorry, what do I press to get the answer
12 back?

13 THE REPORTER: "A."

14 MR. LAYDEN: It's at 1:18:32.

15 (Witness reviews real-time transcript.)

16 A. I was talking about the smoking/nicotine title.
17 That's a key distinction in that sometimes I think
18 people assume or assign what they're measuring to
19 nicotine when in fact they're measuring cigarette
20 smoking, and that's a -- a key distinction that has
21 to be kept in mind when interpreting their data.

22 Q. Are you finished now?

23 A. Yes, sir.

24 Q. List all the other pharmacologically active
25 substances in cigarette smoke, sir.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Well, it depends on what pharmacology, what
2 physiology you want to look at. I think there may be
3 very many.

4 Q. Pharmacologically active, sir, that's what I
5 want to look at.

6 A. You have things like many of the compounds in
7 tar are certain -- certainly
8 physiologically/pharmacologically active in -- in the
9 oral cavity in terms of stimulating the chemical
10 senses, common chemical sense. You have things like
11 carbon monoxide in cigarette smoke, acetaldehyde in
12 cigarette smoke.

13 There may be many more. I'm not all -- all that
14 familiar with them.

15 Q. How about what other substances in cigarette
16 smoke besides nicotine have a pharmacological effect
17 on the central nervous system?

18 A. Two that I'm aware of are carbon monoxide and
19 acetaldehyde that I would know. Whether there are
20 others, I expect that it's possible. I just don't
21 know.

22 Q. According to this document, nicotine and smoking
23 cause a decrease in body temperature; correct?

24 A. The -- yes, smoking has been associated with a
25 decrease in -- in temperature, sort of like at your

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 fingertips, probably related to blood flow.

2 Q. Nicotine causes an increase in respiration and
3 salivation?

4 A. Nicotine by itself, that is a -- again, from the
5 literature, that is what you would find in a -- in a
6 pharmacology text of --

7 Q. Nic --

8 A. -- of nicotine.

9 Q. Nicotine increases the reflexes?

10 A. That's -- that's what it says. I'm not familiar
11 with that literature. I don't know if that's true or
12 not.

13 Q. Nicotine increases hormone release?

14 A. In -- certainly in in vitro studies of -- of
15 animal tissue, that has been shown in -- in test
16 tubes and -- and et cetera in -- in animals.

17 Q. Nicotine increases antinociception?

18 A. That's been reported in the literature, yes.

19 Q. And nicotine also increases nausea and increases
20 dizziness?

21 A. Those are effects at -- at given levels that can
22 happen, yes.

23 Q. Let's look at the previous page. This says

24 "NERVOUS CONTROL OF PHYSIOLOGICAL/PSYCHOLOGICAL
25 EFFECTS OF NICOTINE"; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. Yes, sir.
- 2 Q. And again this is showing the effect that
- 3 nicotine has on the various portions of the nervous
- 4 system; correct?
- 5 A. I believe this is an attempt to, yes, summarize
- 6 the literature at that time.
- 7 Q. So nicotine has an effect on the autonomic
- 8 nervous system; correct?
- 9 A. That's been reported in the literature.
- 10 Q. It has an effect on the hypothalamus; correct?
- 11 A. That's also been reported and --
- 12 Q. It has an --
- 13 A. -- we've -- we've actually did some studies
- 14 and -- and reported those studies.
- 15 Q. It has an effect on the limbic system; correct?
- 16 A. That's been reported in the literature,
- 17 certainly been hypothesized, yes.
- 18 Q. It has an effect on the reticular activating
- 19 system?
- 20 A. Again I think that's been reported in the
- 21 literature. I'm not all that familiar with --
- 22 with -- with that.
- 23 Q. And apparently it's in the hypothalamus where
- 24 the nicotine has an effect to reduce the withdrawal
- 25 discomfort; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. I'm sorry, I don't -- I don't see -- see that.
- 2 Q. Well see it says "HYPOTHALAMUS," points --
- 3 A. Yes.
- 4 Q. -- and it says "REDUCED DISCOMFORT"?
- 5 A. That may be -- that may be referring to
- 6 hypothalamus -- I -- I don't know what that's
- 7 referring to.
- 8 Q. Well it's --
- 9 A. It may be -- it could also, I think --
- 10 hypothalamus is involved in stress responses, and
- 11 that -- that's a little bit what we've talked about,
- 12 anxiety, stress reduction, et cetera, so I -- I don't
- 13 know what the author meant by that.
- 14 Q. Well if you compare it with the page we've
- 15 already looked at, it's the same three things that
- 16 are listed under "REWARD," for pleasure, stimulation
- 17 and withdrawal discomfort; correct?
- 18 A. Yes.
- 19 MS. McDOLLE: Objection to the form.
- 20 Q. Doctor, you've also --
- 21 R.J. Reynolds has also looked at increasing the
- 22 effect that nicotine has in the brain; correct?
- 23 A. I'm sorry, we've looked at --
- 24 Q. Increasing the effect nicotine has in the
- 25 brain.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I -- I don't -- I don't know. We've -- we've
2 looked at trying to understand what the physiologic
3 and pharmacologic properties, how nicotine interacts
4 with the central nervous system. I don't know that
5 we've tried to increase its effect as -- as you've
6 stated.

7 Q. In fact there's been specific studies done on
8 nicotine salts; correct?

9 A. We've -- we've done work on nicotine salts.

10 Q. And what you've found is that levulinic acid can
11 enhance the binding of nicotine to nicotinic
12 receptors in rat -- in rat brain membrane
13 preparations; correct?

14 A. I believe that was a report out of our -- or
15 a -- a finding out of our Pharmacology Division. I'm
16 not all that familiar with it.

17 Q. It was also found that this appeared to be a
18 pharmacologically specific effect since it occurred
19 at a very -- at very low concentrations of
20 levulinate; correct?

21 A. I don't know. I don't know. If you have a
22 document, perhaps I could read it and -- and help
23 you.

24 MR. LAYDEN: 1116?

25 THE REPORTER: Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (Plaintiffs' Exhibit 1116 was marked
2 for identification.)

3 BY MR. O'FALLON:

4 Q. We've had marked as Plaintiffs' Exhibit 1116 a
5 document Bates stamp numbered 51489 4567 through
6 51489 4676.

7 A. Yes, sir.

8 Q. You were one of the authors of this document;
9 correct, sir?

10 A. Yes, sir, I've signed it in the back.

11 Q. Let's look on page 12 of this document, Bates
12 stamp numbered 51489 4579.

13 A. I'm sorry, 4579?

14 Q. Right, page 12 at the bottom.

15 A. Yes, sir.

16 Q. Look at the last paragraph. It says "Nicotine
17 Salts"; correct?

18 A. Yes, sir.

19 Q. It says "Recent studies at RJRT by Lippiello et
20 al. revealed that levulinic acid can enhance the
21 binding of nicotine to nicotinic receptors in rat
22 brain membrane preparations," parenthetical,
23 "(unpublished observations)," end parenthetical,
24 period; correct?

25 A. Yes, sir.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. "This appeared to be a" very "pharmacologically
2 specific effect since it occurred at very low
3 concentrations of levulinate," parenthetical, "(i.e.
4 low nanomolar range)," end parenthetical, period;
5 correct?

6 MS. McDOLE: Objection to the misreading.

7 MR. O'FALLON: What did I read wrong that
8 time?

9 MS. McDOLE: You inserted the word "very"
10 prior to "pharmacologically."

11 MR. O'FALLON: Okay.

12 Q. Quote --

13 The document says, quote, "This appeared to be a
14 pharmacologically specific effect since it occurred
15 at very low concentrations of levulinate,"
16 parenthetical, "(i.e. low nanomolar range)," end
17 parenthetical; correct?

18 A. That's what it says, yes, sir.

19 Q. It says "It is feasible that certain types of
20 nicotine salts can affect the interactions of
21 nicotine with CNS receptors ..."; correct?

22 A. Yes, sir.

23 Q. And "CNS" is "central nervous system"; correct?

24 A. That's correct.

25 Q. And it says "... either by acting directly by

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 ion pairing at the nicotine binding site or by

2 exerting allosteric effects"; correct?

3 A. That's what it says, yes, sir.

4 Q. It then says "If such effects can occur in vitro

5 then it is logical to hypothesize that the biological

6 effects of nicotine and its analogs could be

7 modulated by such mechanisms in vivo as well";

8 correct?

9 A. That's what it says, yes, sir.

10 Q. And R.J. Reynolds adds levulinic acid to its

11 cigarettes as a flavorant; correct?

12 A. I don't know what the flavor ingredients are on

13 cigarettes. I've certainly done tests on research

14 cig -- cigarettes that contained levulinic acid; I

15 don't think for the reasons outlined here, but I'd be

16 happy to describe those to you.

17 Q. When you looked at nicotine levulinate, you

18 looked at it as a means of increasing the nicotine

19 level in the plasma of a smoker; correct, sir?

20 MS. McDOLLE: Objection to the form.

21 A. No, sir, I don't think that's -- that's why we

22 did it. My understanding of -- I'm happy to explain

23 that to you if you -- if --

24 Q. I just look for an answer to my question.

25 A. That's not -- that's not my understanding of why

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that was done. Now that -- in cer -- I'm sorry.

2 Q. Move to strike everything else as not
3 responsive.

4 You found that when you did add nicotine
5 levulinate to tobacco, it significantly increased
6 mainstream smoke yields of nicotine reflected in
7 plasma concentrations; correct?

8 MS. McDOLE: Objection to the form.

9 A. I'm sorry, I've lost that. Could you -- could
10 you repeat it, please.

11 Q. You did find that when you added nicotine
12 levulinate to cigarettes, that it significantly
13 increased mainstream smoke yields of nicotine
14 reflected in plasma concentrations; correct?

15 A. When -- when nicotine levulinate was -- you're
16 adding both nicotine and levulinate to -- to the
17 tobacco or somehow in the processing -- I'm not
18 familiar with how that was done, but yes, nicotine
19 levels in the smoke went up and those were reflected
20 in the -- in the plasma nicotine of the smokers. And
21 that was a very interesting finding because the --
22 those cigarettes, as I recall -- and if -- if you'd
23 like me to look at the document, but those cigarettes
24 that I -- as I recall, were very low
25 tar-to-nicotine-ratio cigarettes, and normally as the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 tar-to-nicotine ratio of a cigarette gets very low,
2 the sensory properties become very harsh. The person
3 does not like the smoke, does not inhale the smoke.

4 So the surprising finding there was that the
5 cigarette smoke, even though coming from low
6 tar-to-nicotine-ratio cigarettes, was not very
7 harsh.

8 Q. In other words, what you determined was that --

9 Well first of all, what you knew is that R.J.
10 Reynolds had the ability to manipulate the
11 tar-to-nicotine ratio; correct?

12 MS. McDOLE: Objection to the form.

13 A. I'm not -- I'm not sure. You -- you can make
14 cigarettes with different tar-to-nicotine ratios.
15 That is possible, yes.

16 Q. In other words, you can manipulate the
17 tar-to-nicotine ratio?

18 MS. McDOLE: Objection to the
19 characterization.

20 A. I mean, the word "manipulate" has -- has become
21 very -- has a very negative connotation. We -- you
22 can change and make different tar-to-nicotine-ratio
23 cigarettes.

24 Q. Okay.

25 A. And you can do that -- I -- I don't do product

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 development or engineering or -- or -- or production,
2 but -- but it is possible to do that.

3 Q. And is it your understanding that RJR in fact
4 has on the market cigarettes with widely varying
5 tar-to-nicotine ratios?

6 A. My understanding is that tar-to-nicotine ratios
7 of -- of commercial cigarettes are within a -- a
8 fairly narrow range for the reasons I've tried to
9 describe. As tar-to-nicotine ratios gets lower, the
10 cigarettes become very unacceptable from -- from a
11 harshness standpoint is my -- is the way I understand
12 it.

13 Q. Because at that point you're getting a lot of
14 nicotine, correct, and nicotine is harsh in taste?

15 MS. McDOLE: Objection to the form.

16 A. I -- I would say a couple things in there.
17 As -- as a pure compound, nicotine has a great deal
18 of harshness in -- in -- in the mouth, in -- in the
19 throat, and I think perhaps the best example of that
20 was the -- the old Favor cigarette, which was sort of
21 too -- you could puff on it, inhale nicotine, and it
22 was very harsh, very irritating.

23 The other thing I would say is that when you
24 said it means you're getting a lot of nicotine, I
25 don't think that necessarily is -- is the case. What

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 it means is you're getting a much lower amount of tar
2 per unit of nicotine, and that's where the harshness
3 of the nicotine begins to be felt more. So that it's
4 not the absolute amount of nicotine, but I think the
5 ratio that -- that's important.

6 Q. So basically the tar buffers the taste of the
7 nicotine, the bad taste of the nicotine; correct?

8 MS. McDOLE: Objection to the form.

9 A. I would say -- I would say a couple things
10 there, that -- that the tar -- yeah, as you remove
11 the tar, if you -- you were -- even for a constant
12 amount of nicotine, the taste would get more harsh,
13 more irritating, and I think smokers would describe
14 that as -- as less -- less pleasant, less
15 acceptable. On the other hand, I think there's a
16 certain amount of -- of irritation, sensation,
17 feeling that does come from cigarette smoke that
18 smokers enjoy. Some of this is related to the
19 nicotine in -- in the cigarette smoke. They talk
20 about the scratch, the bite. Jed Rose again has
21 worked quite extensively in that area and has
22 identified the importance of that in -- in -- in
23 smoker acceptance.

24 And then finally does the tar seem to modify the
25 sensory properties of the nicotine in cigarette

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoke? I would say that's true, yes, and that's why
2 you see this effect when -- when tar-to-nicotine
3 ratios are lowered.

4 Q. You're familiar with the concept of smoker
5 compensation; correct?

6 A. Yes, I've -- I've seen that term in literature
7 and we've published -- I've published papers in that
8 area.

9 Q. And it's your understanding that a smoker
10 basically will smoke any cigarette regardless of what
11 the FTC tar and nicotine levels are to get a certain,
12 quote, "comfort level," end quote, of nicotine;
13 correct?

14 MS. McDOLE: Objection to the form.

15 A. I -- I don't know that I've stated that.
16 I've -- I've talked about the comfort level. I think
17 people smoke cigarettes -- and again different people
18 smoke the same cigarette differently at different
19 times. I think they probably extract different
20 amounts of nicotine from the cigarette smoke at
21 different amounts of time.

22 For whatever enjoyment or -- or level they're
23 smoking to, they may smoke to a particular level
24 at -- at a given time and can change their smoking
25 characteristics to do that.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. You would agree that the level of tar and
2 nicotine that a smoker smokes is usually much
3 different than the levels reported by the FTC;
4 correct?

5 MS. McDOLE: Objection to the form.

6 A. It can be different than the FTC machine. I
7 think that that is not surprising. The -- if you
8 look at why the FTC -- or -- or when the FTC method
9 was established, I think it states quite specifically
10 it was not intended to -- to estimate human smoking.
11 It was not intended to estimate what any smoker or an
12 average smoker would get at any particular point in
13 time.

14 And so I think people can get more; people can
15 get less. It depends how you smoke the cigarette. I
16 mentioned a moment ago the paper we published
17 quite -- quite recently on -- on the compensation
18 issue and what smokers do seem to achieve from
19 different tar categories of cigarettes.

20 Q. Have you ever --

21 Have you ever bothered to tell smokers in your
22 advertisement for your low-tar and ultralow-tar
23 cigarettes that in fact the FTC numbers have no
24 relationship to what they'll actually receive when --

25 MS. McDOLE: Objection.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. -- they smoke your cigarette?

2 MS. McDOLLE: Objection to the form of the
3 question.

4 A. I -- I don't know that we've put that in any
5 advertisement. I don't know.

6 Q. Don't you think you should?

7 A. I don't -- I don't know that we should. The --
8 the -- the method itself says it's not designed to --
9 to estimate or predict what any given smoker would
10 get or even what an average smoker would get. Again
11 we -- I've -- I've published -- I've published in the
12 literature on that topic and -- and it's out there.
13 I've -- I've engaged other people in -- in
14 conversations and debate at meetings about this.

15 Q. Well how much money does RJR making sure --
16 spend making sure that the public -- that the smoking
17 public gets a copy of your published literature?

18 A. I'm -- I'm happy to send it to anyone who -- who
19 requests it, and -- and -- and again, they -- I don't
20 know how much money they would spend. I -- I've been
21 made available for interviews on television and in
22 the newspapers. Anyone who -- can call in and --
23 and -- and ask. I think we spend quite a bit of
24 certainly my time and money when some of those
25 requests come in.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Well you certainly spend a lot of time and money
2 making sure that the word gets out that RJR does not
3 believe smoking's addictive, but what I'm saying is:
4 How much time and money do you spend at telling
5 smokers of your low-tar cigarettes and your
6 ultralow-tar cigarettes that in fact they might not
7 be getting less tar than they would with a full-tar
8 cigarette because of the way they smoke the
9 cigarette?

10 MS. McDOLE: Objection to the argument.

11 A. I don't know how much money we would spend on
12 that. I -- I -- I think you're -- you're, you
13 know -- I think we've published our position on
14 that. Certainly I have. I don't know how you put
15 something out there. I -- when -- when I was asked
16 at the public meeting at -- at the F -- FDA about
17 that, I said how you smoke -- or what you get depends
18 on how you smoke. Can people get more than the FTC
19 method? Yes. Can they get less than the FTC
20 method? Yes. This is not surprising because the
21 method is not designed to do that, not -- it says
22 quite clearly.

23 So I don't know that we would -- why you would
24 spend money to -- to say something doesn't do what
25 it's not supposed to do.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. O'FALLON: Move to strike everything
2 after "I don't know how much money we would spend on
3 that."

4 MS. McDOLE: Objection to --

5 MR. O'FALLON: Move to strike everything
6 else as nonresponsive.

7 MS. McDOLE: Objection to the motion.

8 BY MR. O'FALLON:

9 Q. Dr. Robinson, you've testified previously that
10 you believe that people who choose to smoke were not
11 engaging in an unsafe activity; correct?

12 A. I don't know that I have. I may have.

13 Q. Well do you recall giving testimony in the
14 Kueper case or Kueper case?

15 A. Yes, sir.

16 Q. Okay. I'm going to show you a discovery
17 deposition of John Robinson, Ph.D., from that
18 deposition, and I'd ask you to read the highlighted
19 statement.

20 A. The highlighted part says "... my opinion was
21 that people who chose" -- choose "to smoke" are "not
22 engaging in an unsafe activity."

23 Q. Okay. And you are the person who gave that
24 testimony; correct?

25 A. Yes, sir.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. McDOLE: Can I see it.

2 (Witness handed a document to Ms. McDole.)

3 A. I -- can I point out that I think it says how
4 you define "safe" and "unsafe."

5 MR. O'FALLON: Move to strike that as
6 nonresponsive.

7 Can I see that again, please. Can I see that.

8 MS. McDOLE: Sure. Just let me finish,
9 please.

10 (Ms. McDole handed a document to

11 Mr. O'Fallon.)

12 BY MR. O'FALLON:

13 Q. In fact, let's just be clear as to what that was
14 in response to. Here was the question: --

15 MS. McDOLE: Could we have the page
16 reference too.

17 Q. And this is page 38 of the deposition of John
18 Robinson in the Charles Kueper, K-u-e-p-e-r, and
19 Patricia Kueper, K-u-e-p-e-r, comma, Individually,
20 and Patricia Kueper, as Mother and Next Friend of
21 Jeffrey Kueper, comma, Plaintiffs, comma, versus
22 R.J.R., Inc., R. J. Reynolds Tobacco Company, Inc.,
23 and Reese Drugs, Inc. And I'm reading from page 38
24 and I'm going to go over to page 39 just so you can
25 read along with me, Doctor.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 "Question: (By Mr. Cook) I don't know that it's
2 difficult to remember but my question is--I'm going
3 to line it up--do you, Dr. John Robinson, Principal
4 Scientist--or not Principal Scientist--Senior Staff
5 Scientist at the R&D Center who determines why and
6 how people smoke--that's what your purpose is--do you
7 think that it is unsafe to smoke cigarettes and isn't
8 it true that your opinion on that question--whether
9 it is unsafe to smoke cigarettes--is," parenthet --
10 "is," quote, "'I don't think so?'" end quote.

11 There's then an objection, and your response
12 is: "I thought what I said there--depending ... how
13 you define 'safe,'" comma, "'unsafe'--that my
14 opinion was that people who" choose "to smoke were
15 not engaging in an unsafe activity."

16 That's what you said; correct?

17 A. That's correct.

18 MR. O'FALLON: Can we just take a moment
19 off the record.

20 THE REPORTER: Off the record, please.

21 (Recess taken.)

22 BY MR. O'FALLON:

23 Q. Doctor, given your opinion that people who
24 choose to smoke were not engaging in an unsafe
25 activity, you'd agree that that would be a reasonable

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 opinion for other people to hold; correct?

2 MS. McDOLE: Objection to the form of the
3 question.

4 A. I -- I think what I was trying to state there --
5 and that's outside really my area of expertise, but
6 the little that I'm familiar with is my understanding
7 is even -- even some of our worst critics suggest
8 that one person -- one-third of people who smoke may
9 develop a smoking-related disease. To me, that means
10 two-thirds of the people who smoke do not have any
11 problems, and that would not be an unsafe activity
12 for them.

13 I'm aware of the risks of smoking. I understand
14 the -- the probabilities a little better perhaps than
15 the average person, but there are risks associated
16 with smoking and I am aware of those.

17 Q. Move to strike as nonresponsive.

18 My question was: Do you believe that since you
19 believe that people who choose to smoke were not
20 engaging in an unsafe activity that it would be
21 reasonable for other people to also hold that
22 opinion?

23 MS. McDOLE: Objection to the motion.

24 A. I -- I don't think other people hold that
25 opinion. They're free to hold whatever opinion they

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 want and believe whatever they want.

2 Q. Do you believe it would be a reasonable opinion
3 for other people to hold?

4 A. I think if they knew those statistics, that
5 could be a reasonable opinion for them to hold. I
6 don't think that's what -- my impression is most
7 people far and away think smoking is -- is unsafe, is
8 risky.

9 Q. So it's only the small minority of people in the
10 tobacco companies that think that smoking is safe; is
11 that your testimony?

12 MS. McDOLE: Objection to the form.

13 A. I don't think I said that. I think what I
14 said -- I tried to explain my answer --

15 Q. The fact --

16 A. -- for you.

17 Q. The fact of the matter is --

18 MS. McDOLE: Wait. Had you finished,
19 John?

20 THE WITNESS: Yes, I think so.

21 Q. The fact of the matter is you don't know what
22 other people think, and I'm not asking you what other
23 people think. I'm asking you whether your opinion
24 you believe is reasonable and whether it would be
25 reasonable for other people to hold that opinion.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. McDOLE: Objection to the form of the
2 question.

3 A. They're free to hold whatever opinions they
4 want.

5 Q. And if they held an opinion like yours, you
6 would agree that it would be reasonable; correct?

7 MS. McDOLE: Objection to the form of the
8 question.

9 A. Again I've tried to state I'm aware of the risks
10 of smoking, perhaps better than -- than most people.
11 They're free to hold the opinions they want in their
12 beliefs.

13 Q. Move to strike as nonresponsive.

14 If they held an opinion similar to yours, would
15 that opinion be reasonable?

16 MS. McDOLE: Objection, asked and answered,
17 and I object to the motion.

18 A. I think that could be a reasonable opinion.

19 Q. Would you agree that if the cigarette companies
20 publicly stated that cigarette smoking was addictive,
21 that that would mean that less people would probably
22 begin smoking?

23 MS. McDOLE: Objection to the form of the
24 question.

25 A. I'm -- I'm not -- could you ask that again.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Sure --

2 A. If --

3 Q. Would you agree that if the cigarette companies
4 stated publicly that cigarette smoking was addictive,
5 that it would cause less people to start smoking?

6 A. I don't know if that would follow.

7 MR. O'FALLON: I have no further
8 questions.

9 THE REPORTER: Off the record, please.

10 (Discussion off the record.)

11 DIRECT EXAMINATION

12 BY MS. McDOLE:

13 Q. Good morning, Dr. Robinson.

14 A. Good morning.

15 Q. I have just a couple of questions. First of
16 all, could you look at Exhibit 1114, which is in
17 front of you. You recall that Mr. O'Fallon asked you
18 a number of questions about that document, in
19 particular about a passage appearing on the bottom of
20 page four of the document and continuing on to page
21 five of the document concerning the half-life of
22 nicotine?

23 A. Yes.

24 Q. At that time you told Mr. O'Fallon you wanted to
25 add something and he asked you not to add it at that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 time. Could you tell us what you wanted to add with
2 respect to the testimony concerning that document?

3 MR. O'FALLON: Objection.

4 A. I just wanted to read the -- the next two
5 sentences.

6 Q. Go ahead, please.

7 A. "The nicotine-blood-level hypothesis is seen by
8 some researchers as indicating that smoking is a form
9 of addiction. However, many prominent researchers
10 have pointed out that the claim that nicotine is an
11 addictive drug is not justified."

12 Q. Okay. Thank you. That's all I have with that
13 document.

14 Now, Mr. O'Fallon also read to us and directed
15 your attention to a question and an answer out of
16 your testimony in a much longer deposition in the
17 Kueper case; is that right?

18 MR. O'FALLON: Objection, leading.

19 A. Yes.

20 Q. And in particular, he directed your attention to
21 the answer that you gave that said, "I thought what I
22 said there--depending on how you define 'safe,'
23 'unsafe'--that my opinion was that people who chose
24 to smoke were not engaging in an unsafe activity."
25 Could you explain --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. O'FALLON: Objection.

2 Q. -- that -- that answer for us, please.

3 MR. O'FALLON: Objection, leading.

4 A. As I tried to explain a moment ago, I was
5 referring to the one-third, two-thirds of -- even --
6 even some of the severest critics of the tobacco
7 industry I think suggest that one-third of the people
8 may develop smoking-related diseases and therefore
9 two-thirds of the people do not. And if you just
10 look at a simple proportion, that it was my opinion
11 that that could be viewed as not engaging in an
12 unsafe behavior. I'm also aware of the risks of --
13 of smoking.

14 Q. And is that what you meant when he asked you
15 about whether or not it would be reasonable for other
16 people to share your opinion?

17 MR. O'FALLON: Objection, leading.

18 A. That's what I was referring to, trying to refer
19 to that analysis that I've stated.

20 Q. Okay. Now earlier in the deposition I believe
21 you asked for a break so that you could get a cup of
22 coffee.

23 A. Yes, ma'am.

24 Q. And what did Mr. O'Fallon say to you off the
25 record when you said that you wanted to leave to take

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 a break to get a cup of coffee?

2 A. He asked me if I had a craving, and I believe he
3 said I could quit if I made the decision to,
4 something along those lines.

5 MS. McDOLE: Thank you very much, Doctor.
6 No more questions.

7 THE REPORTER: Off the record, please.

8 (Discussion off the record.)

9 ADVERSE EXAMINATION

10 BY MR. O'FALLON:

11 Q. Doctor, you just stated that you know the risks
12 associated with smoking. Is it your opinion that
13 cigarette smoking causes cancer?

14 A. I'm aware of the risks of smoking. I'm not
15 expert in epidemiology or in those statistics. I
16 understand that if you take a population of smokers,
17 they are at higher risk for certain diseases than a
18 population of nonsmokers, and cancer is one.

19 Q. Does cigarette smoking cause cancer, sir?

20 A. I don't know if that's true or not.

21 Q. So it would be reasonable for the man on the
22 street who doesn't have nearly the expertise that you
23 do to also hold your opinion, which is they don't
24 know whether cigarette smoking causes cancer;
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I think that's a reasonable position.

2 Q. Okay. And would that also be true of the other
3 health risks associated with cancer, which is that
4 you simply don't know whether cigarette smoking
5 causes those other diseases?

6 A. From a scientific cause-and-effect relationship,
7 I do not know.

8 Q. And so you would agree that if the man in the
9 street, the ordinary smoker, holds the same opinion,
10 which is that they don't know whether cigarette
11 smoking causes other diseases, that would be a
12 reasonable opinion for them to hold as well;
13 correct?

14 A. I -- I -- if that's their opinion, if they're
15 aware of the probabilities as I am, that would be a
16 reasonable opinion.

17 Q. And of course R.J. Reynolds has always publicly
18 stated that they don't believe that it's proven that
19 cigarette smoking causes diseases; correct?

20 MS. McDOLLE: Objection to the form.

21 A. I don't know if that's -- if that's the case or
22 not.

23 Q. So the cigarette smokers may well have RJR's
24 considered opinion on that topic to consider in all
25 the other things they consider when they consider

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 whether cigarette smoking causes disease; correct?

2 MS. McDOLE: Objection to the form of that
3 question.

4 A. I think R.J. Reynolds has published statements.
5 Those statements are, I think, to establish the
6 company's point of view. People could read those.
7 It's up to them whether they accept that point of
8 view or another point of view.

9 Q. Certainly when RJR makes those statements, they
10 want people to read them; correct?

11 MS. McDOLE: Objection to the form.

12 A. I don't know if they want them to read them.
13 They put -- I believe they put them out there to let
14 people know what our position is on those issues.

15 Q. Which means you want people to know your
16 position; correct?

17 A. I think we -- I think we would like people to
18 know our position.

19 Q. And in fact you hope people rely on your
20 position; correct?

21 MS. McDOLE: Objection to the form.

22 A. I don't know that -- that that is true or not.
23 My -- my impression is, from going to meetings and
24 interacting with other scientists, people in general
25 do not believe what the tobacco industry says about

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 its cigarettes, its science. They're extremely
2 skeptical. They often criticize researchers who even
3 accept tobacco funding, and so my impression is
4 people are extremely skept -- skeptical of what the
5 industry says.

6 Q. Nonetheless, the industry continues to make
7 public statements that cigarette smoking does not --
8 has not been proven to cause disease in the hopes
9 that people will think just like you, that it's not
10 an unsafe behavior, and that they will continue to
11 smoke and buy their products and continue to make RJR
12 enormous profits; correct?

13 MS. McDOLE: Objection to the
14 mischaracterization.

15 A. I don't know the answer to that question. I
16 think again we put our positions out there so people
17 know what our positions are.

18 MR. O'FALLON: I have no further
19 questions.

20 THE REPORTER: Off the record, please.

21 (Recess taken.)

22

23

24

25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (Witness sworn.)

2 DAVID N. IAUCO

3 called as a witness, being first duly

4 sworn, was examined and testified

5 as follows:

6 ADVERSE EXAMINATION

7 BY MR. O'FALLON:

8 Q. Could you please state your name for the
9 record.

10 A. Yes, David Iauco.

11 Q. Are you currently a -- an employee of R.J.
12 Reynolds Tobacco Company?

13 A. Yes.

14 Q. And what is your current title?

15 A. I'm senior vice president of business
16 development and marketing research.

17 Q. And you have been employed by R.J. Reynolds for
18 how long?

19 A. Since 1975 with the exception of one year.

20 Q. Do you understand that you are here today as a
21 corporate representative of R.J. Reynolds Tobacco
22 Company?

23 A. Yes.

24 Q. And do you understand that you're here to talk
25 about advertising and youth marketing?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes.

2 Q. And you're so prepared to testify?

3 A. Yes.

4 Q. Mr. Iauco, R.J. Reynolds has over the years

5 repeatedly stated that it does not market or

6 advertise its products to children; correct?

7 A. That's our position.

8 Q. In fact, that was one of the messages of the

9 Cigarette Advertising Code that the tobacco companies

10 adopted in 1964; correct?

11 A. The Cigarette Advertising Code of 1964 I've

12 seen. I'm not intimately familiar with all of its

13 provisions.

14 Q. But you would --

15 A. I am familiar with the current code, and that is

16 an aspect of the current statement of our code.

17 Q. Okay. So it would be your testimony that the

18 code as currently stated has as one of its messages

19 that the tobacco companies would not target people

20 under the age of 21; correct?

21 A. That's correct.

22 Q. And that's how the code has defined youth since

23 1964, correct, as under the age of 21?

24 A. Well again I'm not all that familiar with the

25 previous code provisions. I will tell you that we

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 have considered adults of legal age to be 18 years of
2 age and older, so over the course of my tenure with
3 the company, we have marketed to adult smokers 18
4 years of age and older and -- and we changed our --
5 our -- our focus of our efforts to smokers 21 years
6 of age and older, I believe, in 1993.

7 Q. So if the purpose of the original code in 1964
8 was to indicate that the cigarette manufacturers
9 would not target those under the age of 21, R.J.
10 Reynolds has been in violation of that code for a
11 number of years?

12 A. Again I don't know what the -- what the purpose
13 of the original code was. We have marketed to
14 smokers of legal age for the period that I've been
15 involved with this company.

16 Q. And if --

17 A. And -- and that has been a minimum of 18 years
18 of age and older.

19 Q. And if the purpose of the code first adopted in
20 1964 was to indicate that the cigarette industry
21 would not advertise to those under 21, then R.J.
22 Reynolds would be in violation of the --

23 A. That's not --

24 MR. McDERMOTT: Object to the form of the
25 question.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. It's my understanding that that wasn't the
2 stated purpose of the original code, nor -- nor the
3 current code, that it -- that as it regards
4 advertising. I think from the very beginning it was
5 stated that the industry would agree not to advertise
6 in publications that was -- that were directed
7 primarily to those under the age of 21, and that's
8 something that we've abided by from the time that
9 I've been with this company.

10 Q. In any event, we can agree that R.J. Reynolds
11 defines "adult" as 18 years old and older?

12 A. I don't know that R.J. Reynolds has defined
13 "adult." We have a stated policy today of
14 marketing, doing our marketing development and
15 marketing our products, to adult smokers 21 years of
16 age and older. In the past it was 18 years of age
17 and older, and that has been our consistent policy --
18 that has been our policy.

19 Q. And you have made public statements to the
20 effect that you would not market to nonadults,
21 correct, however you want to define "adult"?

22 A. We have made statements that we are not
23 interested in marketing to kids, that we don't want
24 kids to smoke.

25 Q. Okay. Well, you're using the word "kids." I'm

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 going to use the word "youth." Can we both agree
2 that what we're referring to is people under the age
3 of 18?

4 A. I think we can agree -- yes, I think we can
5 agree to that. I think we can agree that the legal
6 age in this country today is 18 and we can agree to
7 that.

8 Q. And again, you've taken out advertisements
9 telling the public that you're not going to market to
10 youth; correct?

11 A. I'm not aware of any advertisements that we've
12 taken out.

13 (Discussion off the stenographic record.)

14 (Plaintiffs' Exhibit 1117 was marked
15 for identification.)

16 BY MR. O'FALLON:

17 Q. We've had marked as --

18 MR. McDERMOTT: I'm sorry, what was the
19 number, 1117?

20 THE REPORTER: Yes.

21 MR. McDERMOTT: All right.

22 Q. We've had marked as Plaintiffs' 1117 a document
23 Bates stamp numbered 50664 6981. Do you recognize
24 this document?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 Q. This is an R.J. Reynolds Tobacco Company
2 advertisement; correct?
- 3 A. I don't re -- refer to it as an advertisement.
- 4 Q. Why not?
- 5 A. Because I view advertising as communicating to
6 sell a particular product. This does not sell a
7 product. This is what I would refer to as a -- a
8 public opinion piece.
- 9 Q. Well --
- 10 A. We did pay for its placement in media, but I
11 don't refer to it as an ad -- I don't consider it an
12 advertisement.
- 13 Q. Fact of the matter is if this makes people have
14 a good opinion about R.J. Reynolds, it may in fact
15 help you sell your product; correct, sir?
- 16 A. I -- I don't know. I don't necessarily agree
17 with that.
- 18 Q. So whether you --
- 19 A. That wasn't its purpose.
- 20 Q. -- want to call it an advertisement or whether
21 we want to call it something else, was this a -- a
22 statement that was placed by R.J. Reynolds in the
23 media?
- 24 A. I believe it was, yes.
- 25 Q. And it was intended to go throughout the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 country; correct?

2 A. I don't -- I don't know. I don't remember. I
3 was not a part of this effort, so I don't know what
4 its intent was in terms of media placement.

5 Q. Do you know whether it reached people in the
6 state of Minnesota?

7 A. No, I don't.

8 Q. In any event, what you're telling here and
9 stating in big bold letters is "We don't advertise to
10 children"; is that right?

11 A. That's what it says.

12 Q. What you tell people is that your advertising is
13 for the purposes of switching; correct?

14 A. Yeah.

15 Q. You'll look -- correct?

16 A. That's correct.

17 Q. That is, you state, quote, "Finally -- and this
18 is sometimes hard for people outside the marketing
19 field to understand -- all of our cigarette ads are
20 what we call 'brand advertising.' Its purpose is to
21 get smokers of competitive products to switch to one
22 of our brands, and to build the loyalty of those who
23 already smoke one of our brands"; correct?

24 A. That's what it says.

25 Q. Let's talk for a second about advertising or

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 these other public statements or whatever you want to
2 call them. You would agree that when you advertise,
3 you are hoping people will see the advertisements;
4 correct?

5 A. Now are you referring to this kind of thing or
6 are you talking about our advertising? I want to
7 make -- I want to understand what your questions are
8 directed towards.

9 Q. Well do you treat this kind of a statement
10 different than your advertising?

11 A. I don't treat it any way. I mean, this is a
12 public opinion piece. It was generated by our
13 external relations department. I'm a marketer;
14 that's where my experience has been. I can speak to
15 our marketing activities and what our intent is for
16 our advertising. I really can't talk intelligently
17 about this kind of an effort because it's outside of
18 the marketing area.

19 Q. Well it's not really, is it? It's a public
20 statement.

21 A. It is outside of the marketing area. Yes, it is
22 out -- yes, it is really.

23 Q. So you didn't consult with your public relations
24 people to tell them how to place this ad and devise
25 this ad so it would be seen and heard and have some

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 impact?

2 A. I had nothing to do with this effort, and I
3 don't believe that anyone in the marketing department
4 directed this -- this --

5 Q. Okay.

6 A. -- series of public opinion pieces.

7 Q. Well let me just make one clarification. When
8 I'm talking about you, you're here speaking on behalf
9 of R.J. Reynolds Tobacco Company.

10 Did R.J. Reynolds Tobacco Company use any of its
11 marketing resources in developing this kind of an
12 ad?

13 A. I -- I really don't know. I do know that the --
14 this ad did not emanate from the marketing
15 department. Perhaps the media department helped to
16 get the placement of this, you know, in the media
17 that it was placed in, and the media department was
18 part of the marketing department. So I don't know is
19 the --

20 Q. Okay.

21 A. -- is the answer.

22 Q. Well since you're having problems with these
23 definitions, I'm going to limit my questions now to
24 advertising, however you want to define that.

25 A. Okay.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 Q. And then we'll see if you have similar views
2 when it comes to public statements. Okay?
- 3 A. Brand advertising.
- 4 Q. Well advertising, or are you going to contend
5 that all of your advertising is brand advertising?
- 6 A. The way I define "advertising," it is
7 communication for a brand or several brands, yes.
- 8 Q. Solely for the purposes of encouraging
9 switching?
- 10 A. No, not solely for the purposes of encouraging
11 switching. To also maintain loyalty for our brands.
- 12 Q. Okay. You would agree that when you advertise,
13 you hope people will see your advertising; correct?
- 14 A. We would hope that our -- the intended audience
15 would see our advertising when we -- when we run
16 brand advertising.
- 17 Q. You hope people will be affected by your
18 advertising; correct?
- 19 A. We would hope that the intended audience,
20 specifically smokers of our -- our products as well
21 as competitive smokers, would take into consideration
22 the information that we have in our -- in our
23 advertising.
- 24 Q. You hope people will rely on your advertising;
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. You're using a legal term that I don't know what
2 you mean by that. What we hope is that they take
3 into consideration what we have to say about our --
4 our ads, our products.

5 Q. You're an educated man; correct?

6 A. Yes, I consider myself so.

7 Q. You have --

8 What's your highest degree?

9 A. I have a master's degree.

10 Q. Okay. Do you understand what the word "rely"
11 means?

12 A. I understand it has some legal significance, and
13 I don't --

14 Q. Okay. I'm not asking you -- I'm not asking
15 about legal significance.

16 MR. McDERMOTT: Let him finish his answer.

17 Q. How do you define the word "rely"?

18 MR. McDERMOTT: Just a second.

19 Mr. O'Fallon, please in the future let the witness
20 complete his answer. Don't cut him off in the middle
21 of a statement.

22 MR. O'FALLON: I really have missed you.

23 A. I'm sorry, what was the question?

24 Q. Do you know what the word "rely" means to you?

25 A. In common terms? I guess the definition would

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 be that someone believes in -- inherently believes in
2 whatever statement.

3 Q. Do you hope people, using your definition, rely
4 on your advertising?

5 MR. LAYDEN: Object to the form.

6 A. For our brand advertising, our hope is that we
7 register the points that we make about our brands and
8 that they're taken into consideration in terms of
9 brand choice.

10 Q. Well how about your other statements such as
11 your public statements about how you don't advertise
12 to children? Do you hope people rely on those
13 statements as well?

14 A. We hope that people read this and take into
15 consideration our point of view, that -- that
16 understand why we have a point of view regarding
17 youth smoking, smoking and health and the other
18 things that these -- these pieces -- the other issues
19 that these pieces dealt with.

20 Q. Do you hope people believe you?

21 A. Not necessarily. We -- we -- we want them to
22 understand why we have the positions that we have.
23 My understanding is the reason we ran these series of
24 public opinion pieces was to -- because our side was
25 not -- our side of the debate on these issues was not

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 being registered, was not being heard by the American
2 public, and we were being criticized for our points
3 of view, not having the opportunity to explain why we
4 had our point of view. And this effort was extended
5 in order to do that, to accomplish that.

6 Then it's up to whoever is reading this to
7 decide for themselves what they believe or don't
8 believe.

9 Q. Yeah. But do you want them to believe you?
10 That's my question.

11 A. Not necessarily. It's up to them. We want to
12 register our point of view. We wanted to register
13 our point of view. That's why -- that's why we paid
14 to have our point of view communicated. All we
15 wanted was to get -- to have some consideration of
16 our point of view.

17 Q. And when it comes to getting that point of view
18 out, you -- the cigarette industry of course has
19 enormous resources; correct?

20 MR. McDERMOTT: Object to the form of the
21 question. He's here on behalf of R.J. Reynolds, not
22 the cigarette industry.

23 Q. R.J. Reynolds has enormous resources; correct?

24 A. I don't know what you mean by "enormous
25 resources."

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Well anything over a billion dollars I usually
2 consider enormous. How much did you spend in
3 advertising last year, your company?

4 A. I don't know precisely. My guess would be
5 somewhere in the neighborhood of 100 to 150 million
6 dollars, somewhere in that neighborhood.

7 Q. Really?

8 A. Yes. In advertising?

9 Q. Well how about in marketing?

10 A. In marketing, about \$500 million, somewhere in
11 that -- that range.

12 Q. Okay. Over the years you've spent approximately
13 \$9 billion, correct, in advertising since about
14 1954?

15 A. I have no idea. That sounds like an enormous
16 figure. It sounds a lot higher than what I think
17 is -- would be reality, but I don't know precisely.
18 That's a long period of time.

19 Q. Well would you consider \$150 million to be a
20 pretty substantial amount of money?

21 A. It depends. For advertising in today's world?
22 Not necessarily.

23 Q. You would agree that you cannot sell a -- your
24 product illegally; correct?

25 MR. LAYDEN: Object to the form.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. I don't know what that means.
- 2 Q. Okay.
- 3 A. We cannot sell our product illegally?
- 4 Q. Right.
- 5 A. Our product is a legal product. We --
- 6 Q. But you --
- 7 A. -- abide by the laws. We sell it lawfully. I
- 8 don't -- I don't know what you mean we can't sell it
- 9 illegally.
- 10 Q. Well you cannot sell your product by making
- 11 untrue statements; correct?
- 12 A. We would not want to -- my personal opinion is
- 13 that we would not want to make untrue statements
- 14 about our products.
- 15 Q. Or you wouldn't sell your product by making
- 16 misleading statements; correct?
- 17 A. What was the question?
- 18 Q. Misleading statements.
- 19 A. No, the full question.
- 20 Q. You wouldn't want to sell your product by making
- 21 misleading statements; correct?
- 22 A. Again my personal opinion is, is that we
- 23 should -- we should not make misleading statements
- 24 about our products and sell them on that basis, and I
- 25 don't believe that we have.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Nor should you withhold crucial information
2 about your products; correct?

3 MR. McDERMOTT: Object to the form of the
4 question.

5 A. I don't know what you mean by "crucial
6 information."

7 Q. How about information you have in your own files
8 concerning the health effects of cigarettes? You
9 would agree that you should not withhold that
10 information; correct?

11 MR. McDERMOTT: Object to the form of the
12 question.

13 A. What information? I don't know what information
14 we have in our files concerning health effects.

15 Q. So I guess you wouldn't be the person to
16 communicate that information to the public; correct?

17 A. It's not our role in advertising and marketing
18 if you're talking about issues of smoking and health
19 and/or scientific issues.

20 Q. Isn't it true that young smokers are the only
21 source of replacement smokers?

22 A. What do you mean by "replacement smokers"?

23 Q. Your smokers die every year. You have to have
24 somebody else coming into the market. Isn't it
25 true --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. People die every year and --

2 Q. Youth are the sole -- are the sole source of
3 your replacement smokers; correct?

4 A. I don't believe so. I think people take up
5 smoking at various ages and some adults take up
6 smoking. Many adults take up smoking.

7 Q. The majority of smokers take up smoking before
8 the age of 18; correct?

9 A. I don't know that for a fact. It depends on
10 what you mean by "take up." I do -- am aware of the
11 fact that -- that kids, many kids, experiment with
12 smoking. Many people before the age of 18 experiment
13 with smoking. That's a problem.

14 Q. Wouldn't it make economic sense for you to
15 encourage youth to smoke since they're really the
16 source of your replacement smokers?

17 A. No, I don't believe so, and there's several
18 reasons why I don't believe so. For one, we would be
19 severely criticized for that, and therefore it would
20 hamper us economically to have to deal with that
21 criticism. Secondly, I don't believe that we'd be
22 effective. I don't think that -- that -- that
23 advertising and marketing has a significant effect
24 on -- on whether or not anyone, kids or adults,
25 choose to smoke, whether they decide they want to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoke.

2 So I don't think it -- I -- I disagree with your
3 statement.

4 Q. So it's your testimony that you don't want
5 people --

6 Well let me ask you this: Do you want people to
7 choose R.J. Reynolds' cigarettes as their first usual
8 brand?

9 A. I want adults to choose R.J. Reynolds'
10 cigarettes as their first usual -- adult smokers to
11 choose R.J. Reynolds' cigarettes as their first usual
12 brand, yes.

13 Q. But you understand that most smokers choose
14 their first usual brand before the age of 18;
15 correct?

16 A. I don't know that for a fact, no. Some do, I
17 suppose, and frankly I don't wish them to choose R.J.
18 Reynolds' because it just brings more criticism on
19 this company.

20 Q. I'm going to show you two documents that have
21 already been marked in this litigation. The first
22 one is a Cigarette Advertising and Promotion Code
23 that's been marked as Plaintiffs' Exhibit 461, and
24 the second one is a document also entitled the
25 "CIGARETTE ADVERTISING CODE" that's been marked

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Plaintiffs' Exhibit 1024.

2 A. Okay.

3 Q. Have you seen either of those two documents
4 previously?

5 A. Yes.

6 Q. Okay. Which of those two documents have you
7 seen previously?

8 A. I believe I've seen both of them.

9 Q. Okay. The first document, Plaintiffs' 461, what
10 do you understand that to be?

11 A. It is the latest Cigarette Advertising and
12 Promotion Code for -- for the industry, adopted in --
13 in 1990.

14 Q. Okay. And that's the code I think you referred
15 to previously when I asked you about the cigarette
16 code; correct?

17 A. Yes.

18 Q. What do you understand Plaintiffs' Exhibit 1024
19 to be?

20 A. All right. This one appears to be the first
21 Cigarette Advertising Code that was adopted in the
22 mid-'60s.

23 Q. Okay. And you say you're familiar with both of
24 these documents?

25 A. I'm -- I'm more familiar with the latest one. I

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 have seen this -- the -- the first Cigarette

2 Advertising Code. I have seen it before, but I'm not
3 intimately familiar with its details.

4 Q. The 1964 was a code that was voluntarily adopted
5 by the industry; correct?

6 A. I don't know. I -- I believe so. I understand
7 that there was an administrator involved who made
8 decisions. It was -- it was a different -- used a
9 different method than the current voluntary code
10 for -- for enforcement.

11 Q. Right. But you understand that that enforcement
12 mechanism ended relatively soon after the institution
13 of the code; correct?

14 A. No, I don't really know what the history of it.

15 Q. In any event, the cigarette manufacturers got
16 together and basically represented to the public that
17 this was an advertising code in 1964 that they would
18 abide by; correct?

19 MR. McDERMOTT: Object to the form of the
20 question, foundation.

21 A. Again I'm not intimately familiar with the
22 history of this code and what the industry did or
23 didn't do back then. I am familiar with the code
24 since I joined the company back in 1975 and our --
25 our efforts to abide by the code since that time

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 period.

2 Q. Okay. The code that was in effect in 1975 was,
3 as I understand it, the 1964 code. Is that also your
4 understanding?

5 A. No, it isn't.

6 Q. Well --

7 A. Because it dealt with television and radio
8 programs, and of course we were not on -- using
9 broadcast at that point in time.

10 Q. Why don't you look at the document you're
11 familiar with real quick.

12 A. Okay.

13 Q. The first page of that document, the Cigarette
14 Advertising/Promotion Code.

15 A. Yes.

16 Q. Do you see the bottom part?

17 A. Yes.

18 Q. It says "This Code, as set" both before,
19 "combines (1) the provisions of the original
20 Cigarette Advertising Code of 1964, as restated in
21 1982; (2) the Code of Cigarette Sampling Practices of
22 1981, as amended in 1983; and (3) the additional
23 restrictions on cigarette advertising and promotion
24 adopted by the industry in 1990"; correct?

25 A. Correct.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So it would appear that there hasn't been --
2 that the first revision to the 1964 code wasn't till
3 1982; correct?

4 A. That's what it would -- would appear, yes.

5 Q. Okay. So it would appear that when you joined
6 the company in 1975, the '64 code, at least to the
7 extent it was still relevant, was still in effect;
8 correct?

9 A. Yeah, and it could be that our company restated
10 the code to eliminate the -- the provisions that were
11 no longer relevant, such as broadcast provisions.

12 I -- I -- again I don't know, but --

13 Q. Let's just look briefly at Bates number
14 51267 4220 in Plaintiffs' Exhibit 461.

15 A. Okay.

16 Q. And I just want to briefly compare that with
17 Bates number 60 -- 608610 in Plaintiffs'
18 Exhibit 1024, the 1964 code.

19 A. All right. What was the Bates again, 60 --

20 Q. It's 610 as the last three digits.

21 A. 610.

22 MR. McDERMOTT: It's page four.

23 MR. O'FALLON: Page four, correct.

24 A. All right. I'm with you.

25 Q. Okay. The 1990 version states that "Cigarette

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 advertising shall not appear --

2 "(a) in publications directed primarily to
3 those under 21 years of age, including school,
4 college or university media (such as athletic,
5 theatrical or other programs), comic books or comic
6 supplements"; correct?

7 A. Correct.

8 Q. A similar subsection to that also appears in the
9 1964 code at parenthetical (a), subparagraph Roman
10 numeral (iii), Roman numeral (iii), where it says
11 "Cigarette advertising shall not appear....

12 "(iii) In school, college, or university media
13 (including athletic, theatrical" or "other
14 programs);" and "... In comic books, or comic
15 supplements to newspapers"; correct?

16 A. That -- that's what it says, yes.

17 Q. So it would appear that those two provisions of
18 the code have been relatively consistent since 1964;
19 correct?

20 A. Yes, it would appear that way.

21 Q. Okay. The 1990 code also says that your
22 advertising shall not appear in "billboards located
23 within 500 feet of any elementary school, junior high
24 school or high school or any children's playground";
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Correct.

2 Q. Number four of the 1990 ad states "Cigarette
3 advertising shall not suggest that smoking is
4 essential to social prominence, distinction, success
5 or sexual attraction, nor shall it picture a person
6 smoking in an exaggerated manner"; correct?

7 A. Correct.

8 Q. That would correspond to Section 1,
9 parenthetical (d), of the 1964 code again on Bates
10 number last numbers 610; correct?

11 A. It would appear to, yes.

12 Q. Okay. Basically the same language; correct?

13 A. It -- it's very similar.

14 Q. Number five of the 1990 code says "Cigarette
15 advertising may picture attractive, healthy looking
16 persons provided there is no suggestion that their
17 attractiveness and good health is due to cigarette
18 smoking"; correct?

19 A. Yes.

20 Q. That would correspond to parenthetical (f) on
21 page 611 of the 1964 code; correct? That states --
22 and I'll just read it into the record -- quote,
23 "Cigarette advertising may use attractive, healthy
24 looking models, or illustrations or drawings of
25 persons who appear to be attractive and healthy,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 provided that there is no suggestion that their
2 attractive appearance or good health is due to
3 cigarette smoking"; correct?

4 A. Yes.

5 Q. The new code also states at number six that
6 "Cigarette advertising shall not depict as a smoker
7 anyone who is or has been well known as an athlete,
8 nor shall it show any smoker participating in, or
9 obviously just having participated in, a physical
10 activity requiring stamina or athletic conditioning
11 beyond that of normal recreation"; correct?

12 A. Yes.

13 Q. And that would correspond with parenthetical (i)
14 on Bates number last three numbers 610 of
15 Exhibit 1024 of the 1964 code; correct?

16 A. It would appear to, yes.

17 MR. McDERMOTT: For the record, I think
18 that's 611.

19 MR. LAYDEN: Yeah.

20 MR. O'FALLON: Oh, I'm sorry, you're
21 right. That's 611.

22 Q. And again, these are voluntary standards that
23 the companies, including R.J. Reynolds, have said
24 they will abide by; correct?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now you would agree that if a company is not
2 going to market to youth, there's really no reason
3 for a company to track the youth market; correct?

4 A. No, there could be legitimate reasons to track
5 youth smoking. For example, I know that there are
6 some efforts now in certain areas of the company -- I
7 think perhaps in the law department -- where there
8 are -- where youth smoking is tracked because of all
9 the charges that have been made against the
10 industry. I'm aware of instances in the past where
11 certain individuals in the company or -- or
12 departments within the -- in the company did track
13 smoking incidence among youth in an effort to try to
14 help to forecast longer-term trends for the industry
15 and for the company and to help understand the
16 dynamics of this industry.

17 So there are legitimate reasons to do it. I
18 will tell you that -- to my knowledge, that any of
19 that information -- none of that information was used
20 for marketing purposes.

21 Q. Well it was the marketing department that
22 tracked it; correct?

23 A. It was marketing research that -- that collected
24 some of that.

25 Q. Right. And you do marketing research in order

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 to make sure that you can more effectively market
2 your products; correct?

3 A. But the marketing research department had
4 responsibilities that went beyond just the --
5 facilitating the marketing of our -- our products.
6 Our marketing research department -- and it's had
7 various titles over the course of -- well since I've
8 been with the company -- was responsible for
9 forecasting trends, of developing forecasts for
10 production, of establishing long-term trends for the
11 industry and for the various companies for strategic
12 planning purposes.

13 There were many different responsibilities that
14 our research department, our marketing research
15 department, has had. And in fact, it even went
16 through various name changes recognizing those
17 different responsibilities over the years.

18 Q. The fact of the matter is one of the reasons
19 that you tracked the youth market was because you
20 wanted to know whether or not your products were
21 being bought by the youth market; correct?

22 A. In part because it had some importance relative
23 to the longer-term trends of our business, the volume
24 of our business on a longer-term basis, the dynamics
25 of our business. It had some importance relative to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that and understanding why our business was
2 performing the way it was.

3 Q. It had a huge importance because you knew that
4 the majority of smokers started to smoke under the
5 age of 18 and picked their first usual brand before
6 the age of 18 and that smokers were extremely loyal,
7 so you knew that young smokers were actually the key
8 to your -- your future performance; correct?

9 A. No, I -- I wouldn't agree with that.

10 MR. LAYDEN: Objection, compound.

11 A. I wouldn't agree with that.

12 Q. You first started to track the youth market in
13 the late '50s; correct? I'm going to show you
14 Plaintiffs' Exhibit 1025.

15 A. I have no idea when there were track -- other
16 than the exhibits that I've seen in the course of
17 these litigation proceedings, I don't know when data
18 was compiled on underage smokers, --

19 Q. Well --

20 A. -- first compiled.

21 Q. -- I guess this will be an educational
22 experience for you.

23 A. Could be.

24 Q. This is a document dated December 9th of 1959;
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. Yes.
- 2 Q. It's a document sent to a Mr. Sugg at R.J.
- 3 Reynolds Tobacco Company; correct?
- 4 A. Yes.
- 5 Q. And what it attaches is the Youth Institute
- 6 research study regarding cigarette smoking among high
- 7 school students; correct?
- 8 A. Yes, it does.
- 9 Q. And that goes down and tracks people in the
- 10 freshmen and sophomore classes as well as the junior
- 11 and senior classes; correct?
- 12 A. Yes, it does.
- 13 Q. So it's going to be hitting kids 13, 14, 15, 16
- 14 and 17; correct?
- 15 A. I don't know the precise ages.
- 16 Q. Well that's the usual range of people in those
- 17 grades, isn't it?
- 18 A. Yeah. High school and college, yeah. It did go
- 19 through those -- it did reference freshmen and up,
- 20 freshmen in high school and up.
- 21 Q. And you're not only tracking how many cigarettes
- 22 they smoke, you're tracking what brands they smoke,
- 23 including R.J. Reynolds' brands; correct?
- 24 A. There is information on that, yes.
- 25 Q. Do you know what department Mr. Sugg was in?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I have a recollection that when I joined the
2 company he was responsible for or had some
3 responsibility for forecasting in our marketing
4 research department.

5 Q. So he was --

6 A. But I have no knowledge of any of this
7 information being used for any marketing purpose.

8 Q. And you don't know that it wasn't either, do
9 you?

10 A. No. I wasn't with the company in 1959.

11 Q. Okay.

12 A. But I have nothing that suggests that -- I have
13 no knowledge that suggests that it was.

14 Q. And no knowledge that suggests that it wasn't?

15 A. Not -- not in 1959.

16 Q. Right.

17 MR. O'FALLON: I'm going to have marked as
18 the next exhibit a document Bates stamped number
19 50076 9839 through 9840.

20 (Plaintiffs' Exhibit 1118 was marked
21 for identification.)

22 BY MR. O'FALLON:

23 Q. This is a document from the marketing research
24 department to a W. S. Smith, Jr. Do you know who
25 that was?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I believe that he was an executive with the
2 company. He may have been -- he may have been
3 president of the company.

4 Q. Okay. So the marketing research department is
5 sending a letter or sending a memo to the president
6 of the company telling him what's happening with the
7 14-to-17-year-old market; correct?

8 A. In part, that's what this information includes.

9 Q. And it notes in the first full paragraph after
10 the statistics talking about the 14-to-17-year-old
11 market, among others, that "Of course, Marlboro is
12 the primary reason that Philip Morris does so well
13 among young adults"; correct?

14 A. That's what it says, yes.

15 Q. And of course, it was this market, the
16 14-to-17-year-old, and the 18-to-24-year-old market
17 that was going to drive Marlboro's growth throughout
18 the '70s; correct?

19 A. I -- I can't answer that affirmatively. No.
20 Apparently Mr. Smith had had a discussion with
21 Mr. Sherrill and was asking about the dynamics of
22 this category and various brands and that that's what
23 generated this information. Again I have no
24 knowledge that this was used for any marketing
25 purpose.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So the president of the company is also
2 concerned about how you're doing among the
3 14-to-17-year-old market as of 1972; correct?

4 A. The president of the company appears to have
5 been concerned about the dynamics of the company and
6 the brands within it and asked for some explanation
7 as to what was happening, and this data apparently
8 was generated to answer those questions.

9 (Plaintiffs' Exhibit 1119 was marked
10 for identification.)

11 BY MR. O'FALLON:

12 Q. This is a document dated -- it's --
13 Plaintiffs' 1119 is a document dated
14 October 30th of 1975 from John Wallace to a
15 Mr. Ogburn; correct?

16 A. Yes.

17 Q. Are those people in marketing?

18 A. In marketing research. They were in marketing
19 research at the time.

20 Q. Okay. And how about the people on the bottom of
21 the page? Are those people who were also in the
22 marketing research department?

23 A. Yes. Each of -- I'm familiar with all of the
24 people, all those names, and I believe that they were
25 all in marketing research.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So marketing research was a rather large
2 department at that time?

3 A. It was a very large department. Again I -- it
4 included many different functions that went beyond
5 what we would consider to be traditional marketing
6 research: forecasting, tracking, planning, so on.

7 Q. And again this is a document that's again
8 tracking the 14-to-17-year-old market; correct?

9 A. It has data relative to those age-groups based
10 on NFO information that -- that was available at that
11 time.

12 Q. In fact, it says in the third paragraph that
13 "SALEM King shows encouraging growth by posting a
14 four point gain in the 14-to-17 market"; correct?

15 A. That's what it says.

16 Q. So apparently you at RJR considered that an
17 encouraging thing, a good thing.

18 A. Apparently this author felt that that was
19 encouraging, and I think again because the trends
20 back at this period of time with the effects that the
21 huge baby bubble were having on everyone's business,
22 including ours, moving through time, that this large
23 generational group, that looking at that information,
24 apparently they thought that that was encouraging
25 because it would -- indicated some appeal for that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 particular brand among that generational group.

2 Q. So it appears that you knew in 1975 that Salem
3 had a large appeal among the 14-to-17-year-old
4 age-group; correct?

5 A. I didn't know. The people that gathered this
6 information apparently knew, but again, to my
7 knowledge, this information wasn't shared with the
8 marketing department, nor was it sought after by the
9 marketing department or used in any way by the
10 marketing department to market our products. We
11 would not consider that group to be of interest to us
12 in terms of marketing our products, only adult
13 smokers 18 years of age and older at that time.

14 Q. So as of 1975, it's your testimony that R.J.
15 Reynolds didn't have any interest in that
16 14-to-17-year-old market?

17 A. We -- the only interest we had for the -- was
18 for the reasons that I -- I mentioned, legitimate
19 interests in terms of forecasting trends in our
20 marketplace, understanding the dynamics of our
21 marketplace. But from the standpoint of marketing
22 our products and our intent, our intent was to only
23 market our products to adult smokers again at this
24 time 18 years of age and older, and that was the --
25 anyone else younger than that was off limits to us.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 That has been our policy. That has been our practice
2 since I've been with this company.

3 Q. I'm going to show you a document that's been
4 marked previously as Plaintiffs' Exhibit 1035. This
5 is a document that's Bates stamp numbered 50142 1310
6 through 50142 1335. It's marked at the front
7 "Mr. C. A. Tucker, Presentation to RJRI B of D -
8 9/30/74, Marketing Plans"; correct?

9 A. Yes.

10 Q. Do you know who Mr. Tucker was?

11 A. Yes.

12 Q. Who was he?

13 A. He was a vice president in charge of marketing,
14 I believe, at this period -- during this period of
15 time.

16 Q. So it appears that this is Mr. Tucker, the vice
17 president of marketing's presentation to the board of
18 directors of RJR, R.J. Reynolds Industries; correct?

19 A. That's what it appears to be, yes.

20 Q. Okay. Let's turn over to the first full page of
21 the document.

22 A. Uh-huh.

23 Q. It's entitled "1975 MARKETING PLANS
24 PRESENTATION," isn't it?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Okay. Let's go down to where it says "YOUNG
2 POPULATION SKEW." No, let's go up -- up above that,
3 "OPPORTUNITY AREAS." "WE WILL SPEAK TO FOUR ...
4 OPPORTUNITY AREAS TO ACCOMPLISH THIS," and that --
5 the "THIS" is increased marketing growth; correct?

6 A. "REESTABLISH RJR'S SHARE OF MARKETING GROWTH."

7 Q. Okay, yeah. As a matter of fact, let's -- let
8 me just go back and read that.

9 The objective in 1975 is stated as, quote, "OUR
10 PARAMOUNT MARKETING OBJECTIVE IN 1975 AND ENSUING
11 YEARS IS TO" ESTABLISH "RJR'S SHARE OF MARKETING
12 GROWTH IN THE DOMESTIC CIGARETTE INDUSTRY"; correct?

13 A. That's what it says, yes.

14 MR. McDERMOTT: "REESTABLISH." You misread
15 it.

16 Q. Okay. In the second paragraph under
17 "OPPORTUNITY AREAS," it states "WE WILL SPEAK TO
18 FOUR KEY OPPORTUNITY AREAS TO ACCOMPLISH THIS";
19 correct?

20 A. Yes.

21 Q. "THEY ARE:

22 1- INCREASE OUR YOUNG ADULT FRANCHISE";
23 correct?

24 A. Yes.

25 Q. Okay. Then it says under that "FIRST, LET'S

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 LOOK AT THE GROWING IMPORTANCE OF THE YOUNG ADULT IN
2 THE CIGARETTE MARKET. IN 1960, THIS YOUNG ADULT
3 MARKET, THE 14-TO-24 AGE GROUP, REPRESENTED 21
4 PERCENT OF THE POPULATION"; correct?

5 A. That's what it says.

6 Q. Mr. Tucker is defining the young adult market as
7 the 14-to-24-year-old age-group; correct?

8 A. That's what it would appear from this.

9 Q. So it would appear that some of these statistics
10 are being used for marketing, wouldn't it, sir?

11 A. Well, I think -- and I've seen this document
12 before and I think it's unfortunate that in terms of
13 the phrasing because he goes on to say a couple
14 sentences after that that they represent "X" percent
15 of the popu -- 27 percent of the population. "THEY
16 REPRESENT TOMORROW'S CIGARETTE BUSINESS."

17 The only explanation I have for this -- because
18 I joined the company shortly after this and I am
19 aware of the marketing plans that we developed after
20 this period of time -- is that he's referring to --
21 and this is my interpretation -- he's referring to
22 again the generation that was affecting everyone's
23 business inside the tobacco industry as well as other
24 industries as well, the -- the extreme effect that
25 the -- the baby-bubble generation was having at

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 setting trends in the marketplace, this huge group
2 that had their own unique attitudes and views towards
3 life, and that he's referring to that generational
4 group and their impact on our market and the fact
5 that we needed to make sure that our brands had
6 appeal to that generation.

7 But again, our marketing plans and our efforts
8 from the time that I joined the company afterwards
9 and I believe before then, looking over past
10 marketing plans, only dealt with the legal adult
11 segment of that -- that group.

12 Q. But the fact of the matter is, is he wanted to
13 make sure that your advertising appealed to that
14 entire baby bubble down to the age of 14 years?

15 A. I don't know that. I don't know that.

16 Q. Okay. Well you've given a lot of testimony
17 about this, so is -- is all your other testimony
18 simply speculation? I mean, this document does say
19 what it does say; correct?

20 A. The document says what it says, and I've already
21 said that it -- it -- it's unfortunate language and I
22 think it's -- it does not represent -- I know that it
23 does not represent -- represent our marketing efforts
24 shortly after this period of time because I joined
25 the company then and it does not represent our

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 marketing efforts. I have gone back and looked at
2 and -- and studied our marketing plans during this
3 period of time, and, you know, I could fill this room
4 with those marketing plans and none of those
5 marketing plans indicate an intent to market to
6 anyone under the age of 18.

7 So I don't think that -- that this presentation
8 and the language here and your interpretation of that
9 language is correct.

10 Q. Well the only interpretation that ultimately
11 matters is the interpretation the jury gives it,
12 sir. The fact of the matter is throughout this
13 document --

14 A. What matters -- what is --

15 Q. -- throughout this document --

16 MR. McDERMOTT: Wait for a question.

17 Q. -- Mr. Tucker emphasizes the need to target this
18 14-to-24-year-old age-group; correct?

19 MR. McDERMOTT: Object to the form of the
20 question.

21 A. No, he doesn't. He doesn't emphasize the need
22 to target 14- to 24-year-olds. In fact, in several
23 places, I believe, he speaks to specific brand plans
24 that are aimed at 18- to 24-year-olds.

25 Q. Well let's look on the second page for

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 "STRATEGY." He says "THUS, OUR STRATEGY BECOMES
2 CLEAR FOR OUR ESTABLISHED BRANDS:
3 "1- DIRECT ADVERTISING APPEAL TO THE YOUNGER
4 SMOKERS," and again that's that 14-to-24-year-old
5 age-group.
6 A. I'm sorry, which -- which page are you on?
7 Q. I'm on well the third page, I guess, "STRATEGY,"
8 number --
9 A. Chart --
10 Q. Chart number seven, "STRATEGY."
11 A. Chart number seven.
12 Q. "THUS, OUR STRATEGY BECOMES CLEAR FOR OUR
13 ESTABLISHED BRANDS:
14 "1- DIRECT ADVERTISING APPEAL TO THE YOUNGER
15 SMOKERS," which he's defined on the previous page as
16 that 14-to-24-year-old age-group; correct?
17 A. If -- no, I don't know that that's what he's
18 talking to. I -- I don't know that to be the case.
19 In some places he talks 14 to 24; in other places
20 it's 18 to 24. Again we had this generational thing
21 happening here, so I don't know specifically what
22 he's talking to. Again I can only go back and look
23 at the marketing plans that gen -- were generated,
24 and those marketing plans are -- you know, indicate
25 that we were directing our efforts to 18-plus

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smokers.

2 Q. Let me show you the next document, which has
3 been previously marked as Plaintiffs' Exhibit 1037.
4 This is a document from a J. F. Hind to again
5 Mr. C. A. Tucker, the vice president of marketing;
6 correct?

7 A. That's correct.

8 Q. It says, quote, "Our attached recommendation to
9 expand ... the successfully tested," quote, "'Meet
10 the Turk,'" end quote, "ad campaign and" our "new
11 Marlboro-type blend is another step to meet our
12 marketing objective: To increase our young adult
13 franchise. To ensure increased and longer-term
14 growth for CAMEL FILTER, the brand must increase its
15 share" for "penetration among the 14-to-24 age group
16 which have a new set of more liberal values and which
17 represent tomorrow's cigarette business"; correct?
18 A. That's what it says.

19 Q. And in fact, the Meet the Turk advertising
20 campaign was instituted; correct?

21 A. Yeah, that was a campaign that we used. Again I
22 have the same response to this.

23 (Discussion off the stenographic record.)

24 (Plaintiffs' Exhibit 1120 was marked
25 for identification.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 BY MR. O'FALLON:

2 Q. Plaintiffs' Exhibit 1120 is a document Bates
3 stamp numbered 50071 3032. It appears to be a
4 Winston ad that was apparently published in 1976;
5 correct?

6 A. It's a Winston ad. I don't know -- yes, there's
7 the copyright, 1976.

8 Q. Okay. It's a young woman, and it says, quote,
9 "When your taste grows up. Come to Winston";
10 correct?

11 A. It is a woman, and it does say "When your taste
12 grows up."

13 Q. That would sure appear to be aiming at a young
14 market, wouldn't it, since you're telling them when
15 their taste grows up, young man, come to Winston?
16 Correct?

17 A. First of all, it shows an adult model. I have a
18 vague recollection of this approach, and it emanated
19 from a -- a theory that I don't think was ever
20 substantiated that -- that Winston appealed to a --
21 a -- a somewhat -- and I'll call it 25-plus-age
22 smoker and that while Marlboro might appeal to a
23 younger-age smoker, that there were smokers that were
24 switching from Marlboro to Winston when they reached
25 the mid-twenties or early thirties and that that's

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what this campaign was all about. And I think that
2 was a -- I don't believe that that was ever
3 verified --

4 Q. Don't you think --

5 A. -- in terms of strategy.

6 Q. Don't you think a 14-year-old boy would find her
7 fairly attractive?

8 A. I don't know. I don't know what --

9 Q. You don't?

10 A. -- 14-year-old boys think.

11 Q. Were you not a 14-year-old boy?

12 A. Yes, I was.

13 Q. Well I can tell you when I was a 14-year-old
14 boy -- and I was at this time -- that I would have
15 found her real attractive.

16 A. So what does that have to do with --

17 MR. McDERMOTT: Counsel, you're
18 testifying. Do you have a question?

19 Q. And so what you're really doing here is you're
20 aiming this at young boys and you're using sex to aim
21 it at young boys; correct?

22 A. That -- that is preposterous.

23 Q. Okay.

24 A. That's ridiculous.

25 (Discussion off the stenographic record.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And if in fact this ad does appeal to
2 14-year-old boys using sex appeal as one of the
3 factors, it would, number one, be a violation of the
4 Cigarette Advertising Code; correct?

5 MR. McDERMOTT: Object to the form of the
6 question.

7 A. First of all, I don't believe that premise for a
8 minute. It's preposterous to me to suggest that this
9 ad would appeal to 14-year-old boys or that it
10 somehow presents sex or this cigarette in -- in a way
11 that it becomes essential to sexual appeal. That's
12 not what this ad does. I -- I just -- I think your
13 whole premise is preposterous.

14 Q. So you don't think that this might say to a
15 young 14-year-old man that, "Hey, grow up, smoke
16 Winstons" --

17 A. No, I don't think --

18 Q. -- "and you may be able to attract a nice young
19 woman like this"?

20 A. I don't think so. I think that's crazy, and
21 also I don't consider 14-year-olds to be men.

22 Q. You were still tracking the 14-to-17-year-old
23 market by 1980; correct?

24 A. I don't know.

25 Q. Oh, I thought you went back and looked at all

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the marketing documents.

2 A. I looked at marketing documents, yes.

3 Q. You missed marketing research?

4 A. I haven't seen every document and -- and I'm not

5 aware of every attempt -- everything that we've done

6 in this company or that everyone has done.

7 Q. Let me show you Plaintiffs' Exhibit 1026. Do

8 you recognize this document? This is a document

9 dated July 9th of 1980.

10 A. I saw this document in preparation for -- for

11 this deposition.

12 Q. It's a document you discussed with your lawyer

13 before this deposition?

14 A. I don't recall if we discussed this or not.

15 Q. Okay.

16 A. I saw it. That was it. You know, I was given a

17 bunch of documents and asked to familiarize myself

18 with them.

19 Q. The subject matter is "TEENAGE SMOKERS (14 TO

20 17) AND NEW ADULT SMOKERS AND QUITTERS"; correct?

21 A. Yes, that's what the subject is.

22 Q. It says "This is the second report tracking

23 teenage smokers and new adult smokers and quitters";

24 correct?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now did you encourage quitters to rejoin the
2 market?

3 A. No.

4 Q. It's your testimony that at no time did you
5 advertise and try to encourage quitters to come on
6 back into the market?

7 A. Not that I'm aware of. That was -- that's never
8 been an intent that we had.

9 Q. Then why track them?

10 A. I believe that what this document is all about
11 is -- I'm familiar with who it's directed towards,
12 Mr. Frydman, and my understanding, my -- my
13 recollection is that he was head of our forecasting
14 area. And I believe that he probably requested this
15 information to aid him in doing his job, which was
16 forecasting trends in this marketplace, trends for
17 the industry and for various brands, and probably to
18 get a better understanding because I think he came to
19 the company about this time. He probably wanted a
20 better understanding of the dynamics of this
21 category.

22 Again I don't believe that this information,
23 that this document was used for any marketing
24 purpose, that it went to any marketing people. I
25 certainly never saw this as part of my job as a

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 marketer, and I think that it was just a legitimate
2 review of information to help an individual who was
3 responsible for forecasting trends and volume.

4 Q. It says "SUMMARY OF KEY FINDINGS. Below is a
5 summary of the key findings based on the analysis of
6 teenage smokers and new adult smokers and quitters";
7 correct?

8 A. That's what it says, yes.

9 Q. It says "RJR is continuing to lose share among
10 teenage smokers, with 19.9 percent of the teenage
11 smokers in Fall" of "1979 versus 21.3 percent in
12 Spring" of "1979"; correct?

13 A. That's what it says.

14 Q. Under the next one --

15 Under the next bullet point it says "Philip
16 Morris continues to gain ... among the 14-to-17 year
17 old age group ..."; right?

18 A. Right.

19 Q. And that was concern to you; correct?

20 A. Again it was concern for --

21 Q. To the company. I'm sorry, to the company.

22 A. -- for legitimate reasons.

23 Q. Because you were losing market share among an
24 extremely important segment of the --

25 A. No.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. -- of the market; correct?

2 A. Because -- because it was important in
3 understanding what the dynamics of our business
4 were. It was important in understanding and being
5 able to forecast the -- the future trends, volume
6 trends, for our -- for our business. There are --
7 there are a number of legitimate reasons why this
8 kind of information would be of interest to the
9 company or individuals within the company. It had
10 nothing to do with targeting or marketing to that
11 group.

12 MR. McDERMOTT: When --

13 MR. O'FALLON: Let me just do one more --

14 MR. McDERMOTT: -- you finish your
15 questioning with this -- on this document or one more
16 document --

17 MR. O'FALLON: One more document and
18 then --

19 MR. McDERMOTT: That will be fine, short
20 break.

21 MR. O'FALLON: As a matter of fact, I was
22 going to suggest that.

23 MR. McDERMOTT: Good.

24 A. In fact, if I could continue on, at top of page
25 three it says "Smoking behavior of 14-to-17 year olds

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 is analyzed in order to improve our ability to
2 forecast future trends. It is not designed to be
3 used as a tool for developing marketing strategies
4 for this population group." It even says that in the
5 document itself.

6 Q. Well I'm going to move to strike that as
7 nonresponsive. The fact of the matter is, is there's
8 an internal document that's been heavily redacted
9 that I believe reflects a policy decision not to use
10 "young adult smokers," to be careful about the
11 terminology you use, and since I don't have that
12 document, I'm really at a disadvantage of being able
13 to question why it says what it says.

14 A. Well I don't know anything about that.

15 Q. Well --

16 MR. DOCHERTY: Object to counsel
17 testifying.

18 MR. LAYDEN: What page was that that the
19 witness was reading from --

20 MR. McDERMOTT: It was the third page of
21 the document.

22 MR. LAYDEN: -- so the record's clear?

23 THE WITNESS: Page three.

24 MR. McDERMOTT: Bates number 50125 4291.

25 MR. LAYDEN: Thank you.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. O'FALLON: I'm going to move to strike
2 all of that.

3 (Plaintiffs' Exhibit 1121 was marked
4 for identification.)

5 BY MR. O'FALLON:

6 Q. I've had marked as Plaintiffs' Exhibit 1121 a
7 document Bates stamp numbered 50845 3894; dated
8 July 22nd, 1980; subject, MDD reporting on teenage
9 smokers, 14 to 17.

10 This document is from a J. H. Long; correct?

11 A. G. H. Long.

12 Q. G. H. Long. Who's that?

13 A. He was the former president of R.J. Reynolds
14 Tobacco Company.

15 Q. And was he the former president at this time,
16 1980?

17 A. No, I don't believe so.

18 Q. Okay. What was his position before? What would
19 his position have been in 1980?

20 A. I think he was executive vice president of sales
21 and marketing.

22 Q. Okay. So one of his responsibilities was
23 marketing at this point in time; correct?

24 A. Yes.

25 Q. And he's writing this memo to Mr. Horrigan,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 who's the president of the company; correct?

2 A. He -- he was a senior executive in the company.

3 I can't remember his precise title.

4 Q. Okay. It says, quote, "Attached is" an "MDD

5 report covering the aforementioned subject," and that

6 subject is the "MDD Report on Teenage Smokers (14 to

7 17)"; correct?

8 A. Yes.

9 Q. "Last January, a report was issued on this

10 subject that indicated that Philip Morris had a total

11 share of 59 among 14-to-17 year old smokers, and

12 specifically, Marlboro had a 52 share"; correct?

13 A. Yes.

14 Q. "This latest report indicates that Philip

15 Morris' corporate share has increased by about

16 4 points; however, Marlboro remains the same at 52";

17 correct?

18 A. Yes.

19 Q. "Importantly, the report further indicates that

20 RJR continues to gradually decline, and between the

21 spring and fall 1979 periods, RJR's total share

22 declined from 21.3 to 19.9"; correct?

23 A. Yes.

24 Q. It says "Hopefully, our various planned

25 activities that will be implemented this fall will

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 aid in some way in reducing or correcting these
2 trends"; correct?

3 A. That's what it says.

4 Q. So what he's telling the president of the
5 company is, "Hopefully our planned activities will
6 turn around this reduction, this market share we
7 have, among the 14-to-17-year-old smokers"; correct?

8 A. I don't know.

9 MR. McDERMOTT: Object to the form of the
10 question.

11 A. I don't know that's what he's saying. I mean,
12 I've been made aware of this memo as well, and I
13 know -- understand that Mr. Long has been asked about
14 this memo and indicated that that indeed was not his
15 intent.

16 Q. Well he hasn't been asked by me.

17 A. Well then you should ask him, but all I can tell
18 you is that I am very familiar with what our planned
19 marketing activities were following this time period,
20 and we never had any planned marketing activities
21 oriented towards 14- to 17-year-olds or any underage
22 group below the age of 18, so I can't explain this.

23 MR. O'FALLON: Why don't we take that
24 break.

25 THE REPORTER: Off the record, please.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (Recess taken.)

2 BY MR. O'FALLON:

3 Q. Would you agree that realistically if R.J.
4 Reynolds is to survive and prosper over the long term
5 that RJR must get its share of the youth market?

6 A. No.

7 Q. I'm going to show you a document that's
8 Plaintiffs' Exhibit 1096. This is a document
9 entitled "RESEARCH PLANNING MEMORANDUM ON SOME
10 THOUGHTS ABOUT" THE "NEW BRANDS OF CIGARETTES FOR THE
11 YOUTH MARKET," and specifically I'd like you to look
12 on the first full page of that document, the second
13 paragraph and the first sentence. Dr. Teague, who's
14 the author of this document, states, quote,
15 "Realistically, if our Company is to survive and
16 prosper, over the long term, we must get our share of
17 the youth market"; correct?

18 A. That's what this says.

19 Q. So RJR at least had that notion within its
20 corporate knowledge as of the time of this memo;
21 correct?

22 A. No, I don't believe so. It's totally contrary
23 to our company policy, and I'm aware of this document
24 again because of litigation, and however I'm not -- I
25 don't think anyone knows whether this document was

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 ever viewed by anyone other than Dr. Teague. And I
2 think that it's also important to point out because
3 that is the implication that you're making that he
4 even states at the beginning that "... it should be
5 said that we are presently, and I believe unfairly,
6 constrained from directly promoting cigarettes to the
7 youth market" So he even indicates that what
8 he's about to cover is contrary to policy of the
9 company.

10 Q. So were the previous statements about directly
11 marketing Camels to the 14-to-24-year-old market.
12 Those were also directly contrary to public policy,
13 and yet they were made; correct?

14 A. To company policy, and they were made -- again
15 made in a different context.

16 Q. The next document I'm showing you is a document
17 that's been previously identified as Plaintiffs'
18 Exhibit 1031. It's a document dated February 29th,
19 1984 entitled "STRATEGIC RESEARCH REPORT, YOUNGER
20 ADULT SMOKERS: STRATEGIES AND OPPORTUNITIES."

21 You've seen this document; correct?

22 A. Yes.

23 Q. This document was widely distributed throughout
24 the marketing department; correct?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. In fact, it was published by the marketing
2 department; correct?

3 A. It was published by strategic research group
4 with -- with -- that technically was within the
5 marketing department.

6 Q. Which is why it says at the bottom "PUBLISHED BY
7 THE MARKETING DEVELOPMENT DEPARTMENT"; correct?

8 A. "MARKETING DEVELOPMENT DEPARTMENT," yes.

9 Q. Let's turn to page Bates number -- well Roman
10 numeral i, small i, --

11 A. Okay.

12 Q. -- where it states "MANAGEMENT SUMMARY." It
13 states "Younger adult smokers have been the critical
14 factor in the growth and decline of every major brand
15 and company over the last 50 years"; correct?

16 A. That's what it says, yes.

17 Q. It says "They will continue to be just as
18 important to brands/companies in the future for two
19 simple reasons"; correct?

20 A. Yes.

21 Q. It says "The renewal of the market stems almost
22 entirely from" 20 -- "from 18-year-old smokers";
23 right?

24 A. Yes.

25 Q. "No more than 5 percent of smokers start after

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 age 24"; correct?
- 2 A. Yes.
- 3 Q. And in fact, you knew that the majority of
- 4 smokers start before the age of 18; correct?
- 5 A. No.
- 6 Q. Why don't you turn to page two.
- 7 A. The two i?
- 8 Q. No, just actual --
- 9 A. Numeral two?
- 10 Q. -- Arabic two.
- 11 A. Yes.
- 12 Q. At the top it says Roman numeral "I. THE
- 13 IMPORTANCE OF YOUNGER ADULT SMOKERS." Do you see
- 14 that?
- 15 A. Yes.
- 16 Q. It says under one, "VOLUME. Younger adult
- 17 smokers are the only source of replacement smokers";
- 18 correct?
- 19 A. Yes.
- 20 Q. "Repeated government studies (Appendix B) have
- 21 shown that:
- 22 "Less than one-third of smokers ... start
- 23 after" the "age" of "18"; correct?
- 24 A. That's what it says.
- 25 Q. That would mean that two-thirds of smokers start

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 before the age of 18; correct?

2 A. That's what this says.

3 Q. It says --

4 And then it says "Only 5 percent of smokers
5 start after age 24"?

6 A. Yes.

7 Q. Okay.

8 A. But again, what -- what is the definition of
9 "starting"? My understanding is that she is -- and
10 I think it's later in this document, if my memory
11 serves me right. The author, Ms. Burrows, is
12 referring to government studies, and again the
13 difference between starting regular cigarette usage
14 and experimentation is -- is -- is an issue here, and
15 I think the government studies really reflect
16 experimentation with cigarettes among youth.

17 Q. It says "Thus, the annual influx of 18-year-old
18 smokers provides an effortless momentum to
19 successful," quote, unquote, "'first brands'";
20 correct?

21 A. I'm sorry, I'm not with you. This is --

22 Q. I'm sorry. Go back to -- go back to Roman
23 numeral small i, small i.

24 A. "MANAGEMENT SUMMARY"?

25 Q. Yeah.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes, yes, yes.

2 Q. Do you see where she says "Thus, the annual
3 influx of 18-year-old smokers provides an effortless
4 momentum to successful 'first brands'"? Correct?

5 A. Yes.

6 Q. And then she defines first brands, "i.e., those
7 which appeal to 18-year-old smokers rather than
8 switchers ages 19 to 24"; correct?

9 A. Right.

10 Q. And the reality is, is that you know that the
11 vast majority of smokers smoke before age 18 and pick
12 their first brand before age 18?

13 A. No, I don't know that. That's my whole point,
14 is that this was the point of view that this one
15 individual had and -- and supported, but importantly
16 I -- I don't know that's the case. I know a lot of
17 experimentation goes on among kids, among underage,
18 among less than 18-year-olds, and that's -- that's a
19 problem. That's an issue in today's society. It's a
20 societal problem.

21 What I don't know is that the vast majority of
22 kids take up -- or -- or that the vast majority of
23 smokers take up smoking on a regular basis prior to
24 age 18. I don't know that to be a fact at all. I
25 don't think there's good data on that, and regardless

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of that, regardless of -- of -- of any of that is the
2 fact that we have for as long as I have been with
3 this company marketed only to adult smokers 18 years
4 of age and older regardless of when a smoker might
5 choose a first usual brand. They are off limits to
6 us from a marketing standpoint until they reach the
7 legal age, and that has been our policy and that has
8 been our practice.

9 Q. I understand that's the corporate line.

10 A. No, it's not the corporate line. That's been
11 our policy and our practice. I resent --

12 Q. And the documents I've shown you would indicate
13 that you're not telling me the truth about that --

14 A. That's --

15 Q. -- so the jury is going to have to decide what
16 was your policy and practice. Okay?

17 MR. McDERMOTT: Don't argue with the
18 witness. If you have a question --

19 MR. O'FALLON: The witness wants to argue
20 with me. If the witness wants to argue, we'll
21 argue.

22 THE WITNESS: I'm not going to let --

23 MR. McDERMOTT: Counsel, ask questions;
24 don't make statements.

25 MR. O'FALLON: I've been trying to do that,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 sir.

2 MR. McDERMOTT: And if you try hard enough,
3 I'm sure you'll succeed. Let's get on with it.

4 MR. O'FALLON: You've just -- you've got to
5 have the last word, don't you, Bob? It's just --
6 it's a genetic thing with you, isn't it? You know,
7 are you as Irish as I am? Is that the thing here?

8 MR. McDERMOTT: I don't know whether it's
9 nature or nurture. We can take that up on a break.

10 MR. O'FALLON: Yeah. Well you're just like
11 my dad; you've just got to have the last word.

12 MR. McDERMOTT: I'll let you have it this
13 time.

14 MR. O'FALLON: No, you didn't.

15 BY MR. O'FALLON:

16 Q. The fact of the matter is you've been tracking
17 14-to-17-year-old smokers for the last -- from at
18 least 1970 to 1980 and you knew exactly what brands
19 they were smoking back at those times; correct?

20 A. When you say "you," no, not me.

21 Q. R.J. Reynolds was, sir.

22 A. R.J. -- certain individuals within R.J. Reynolds
23 were tracking it for legitimate purposes, as I've
24 already explained, for the purposes of forecasting
25 and other legitimate purposes. And what I will not

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 agree to is the implication that we were doing it for
2 marketing purposes because we wanted to market to
3 youth. I know that is not true.

4 Q. Well the jury will decide what's true or what's
5 not true.

6 MR. McDERMOTT: I move to strike that
7 remark.

8 MR. O'FALLON: You don't want the jury to
9 decide what's true and what's not true?

10 MR. McDERMOTT: I don't want you lecturing
11 the witness or the jury right now. You've got
12 closing argument.

13 Q. Let's look at page 50192 8476.

14 MR. McDERMOTT: Do you have a -- an
15 Arabic --

16 MR. O'FALLON: Seven.

17 MR. McDERMOTT: Page seven, okay.

18 Q. Again this is a summary of the importance of
19 younger adult smokers. Number one, it states
20 "Younger adult smokers are the only source of
21 replacement smokers"; correct?

22 A. Yes, that's what it states.

23 Q. It states "More than a share point of
24 18-year-old smokers enter the market every year";
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes.

2 Q. Then it talks about a first-brand strategy and
3 that it has significant share advantages. Basically
4 it says "Optimum ability to capitalize on the influx
5 of 18-year-old smokers." That's one of the
6 advantages of a first-brand strategy; right?

7 A. Yes.

8 Q. That's because if you've already convinced those
9 smokers under the age of 18 to smoke, for instance,
10 Marlboro, when they turn age 18, you don't have to do
11 anything else. They're already there for you;
12 right?

13 A. That's -- no, that's not necessarily what that
14 suggests at all. We know that the greatest amount of
15 switching occurs in the younger-adult age-group, 18
16 to 24 -- it's been documented in our studies -- and
17 that during that period of time, smokers land on a
18 first usual brand. Some might do that younger than
19 that; many do after the age of 18.

20 And what this advocates, what this entire
21 document advocates, is making sure -- is that we
22 should have an effort to make sure that our brands
23 are appealing to younger adult smokers, defined as
24 18- to 24-year-olds.

25 Q. Well the fact of the matter is, is you want to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 make sure that whenever a smoker fix -- picks their
2 first brand, that your products are among the brands
3 they consider; correct?

4 A. As long as they're over the age of 18, yes.

5 Q. This first-brand strategy isn't talking about
6 switching, is it, sir? Look at the -- the second --

7 A. It's deciding -- it's talking about deciding on
8 a usual brand.

9 Q. Okay. Look at what the second dot says.

10 "'First brands' compete from the high ground. They
11 do not need switching gains to grow and can afford
12 some switching losses"; correct?

13 A. That's what it says.

14 Q. And you would agree with that?

15 A. Not necessarily. I mean, this whole premise,
16 this whole theory of the dynamics of this industry,
17 there are parts of it that I would agree with; there
18 are parts of it that I don't agree with. I don't
19 agree it's the only way to grow our business, and
20 we've got several examples of ways that we've grown
21 our business without younger adult smokers. Our
22 largest brand has become that, Doral, through
23 switching gains among older smokers.

24 We -- as I've told you before, our strategies,
25 our marketing strategies, our marketing programs, all

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 reflect a variety of -- of different strategies,
2 which include some for brands like Camel that are
3 oriented towards younger adult smokers, 18 to 24 and
4 more recently 21 to -- 21 to 30, 34, as well as
5 strategies to appeal and create switching gains among
6 older adult smokers.

7 Q. You also had marketing strategy to try to appeal
8 to first-usual-brand smokers; correct?

9 A. As -- as long as they were over the legal age,
10 18.

11 Q. You can't guarantee that, can you, sir?

12 A. I can't guarantee anything.

13 Q. You know that if you appeal to an 18-year-old,
14 you're necessarily going to appeal to a 17-year-old,
15 don't you?

16 A. No, I don't -- I don't know that.

17 Q. That just makes a matter --

18 That's just common sense, isn't it, sir?

19 A. No. No, it isn't. But so what? What I do know
20 is that our advertising doesn't cause anyone to start
21 smoking, and as long as I know that and I firmly
22 believe that, it's not really an issue. What we have
23 tried to do is gear our advertising, gear our
24 marketing programs to have appeal to the intended
25 target audience, and in the case of younger adult

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smokers, that's smokers 18 to 24 and again more
2 recently 21 to 24.

3 Now whether or not our advertising or some
4 marketing program might have some appeal, it may be
5 appealing, someone might like the advertising at a
6 younger age, it's really not an issue because it does
7 not create or it does not incite that person to take
8 up smoking as it doesn't incite the adult to take up
9 smoking.

10 Q. As long as you rely on this notion that your
11 advertising is not encouraging anybody to start
12 smoking, you'd -- you'd advertise to six-year-olds,
13 wouldn't you?

14 A. No, I wouldn't. I have no interest in
15 advertising to six-year-olds. I told you what our
16 intent --

17 Q. Unless --

18 A. -- and what --

19 Q. Unless --

20 A. -- our interest is.

21 Q. Unless by the age of 12 they might select an RJR
22 product as their first brand; right?

23 A. I've already told you I do not agree with that.
24 It's not our intent.

25 Q. But you will agree that if you appeal to an

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 18-year-old, you're necessarily going to appeal to a
2 17-year-old?

3 A. No, I don't know that to be the fact
4 necessarily. All individuals are different.
5 They're -- they're different among -- even within
6 age-groups. So I might appeal to some individual
7 that's 18 year old and may appeal to another one
8 that's 55 year old with the same advertising or -- or
9 marketing approach. So you -- you don't necessarily
10 appeal to everybody with -- with the same approach,
11 even if they're a year apart, even if they're within
12 the same age range.

13 Q. Do you think on your 18th birthday you wake up
14 and say, "Wow, that Camel ad appeals to me"?

15 A. No.

16 Q. No. If that Camel ad appealed to you on your
17 18th birthday, it probably appealed to you the day
18 before your 18th birthday, didn't it?

19 A. What's the point?

20 Q. And it probably appealed to you a month before
21 your 18th birthday.

22 A. So what?

23 Q. And it may have appealed to you a year before
24 your 18th birthday.

25 A. It doesn't matter if --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. It doesn't matter to R.J. Reynolds. It matters
2 to a lot of the rest of us.

3 MR. LAYDEN: Objection, argumentative.

4 MR. McDERMOTT: Objection.

5 Q. Is it your testimony that it doesn't matter to
6 R.J. Reynolds that your ads appeal to 17-year-olds?

7 A. It doesn't matter because our ads do not
8 encourage anyone to start smoking.

9 Q. So just so we're clear, it doesn't matter to you
10 that your ads appeal to people under the age of 18?

11 A. It doesn't matter because our ads do not
12 encourage anyone to start smoking, kids or
13 otherwise.

14 Q. I'd like to next show you Plaintiffs'
15 Exhibit 1038. This is a document Bates stamp
16 numbered 50444 6555 through 50444 6663. This is
17 entitled "MDIC, MARKETING DEVELOPMENT INTELLIGENCE
18 CENTER"; correct?

19 A. Yes.

20 Q. And the title of this document at least on the
21 second page is "QUESTION, ARE YOUNGER ADULT SMOKERS
22 IMPORTANT?"; correct?

23 A. Yes.

24 Q. On the third page of that document -- and again
25 there aren't Arabic numbers at the bottom, so I'm

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 going to refer to the last three numbers of the
2 Bates, --
3 A. Bates.
4 Q. -- 557.
5 A. Uh-huh.
6 Q. At the top it says "IN THE YOUNGER ADULT SMOKER
7 OPPORTUNITY ANALYSIS, WE LEARNED . .
8 "1. THERE ARE 2 DISTINCT" CLASS "OF YAS." And
9 "YAS" refers to "young adult smokers"; correct?
10 A. Yes.
11 Q. And then they put out what those two distinct --
12 distinct classes are; correct?
13 A. Yes.
14 Q. "FUBYAS - THOSE ... ADULTS WHO ARE ALREADY
15 SMOKERS BUT" WHO "HAVE REACHED THE STAGE OF CHOOSING
16 A FIRST USUAL BRAND." And then "FUBYAS" means,
17 parenthetical, "(FIRST USUAL BRAND YOUNGER ADULT
18 SMOKERS)"; correct?
19 A. Right.
20 Q. "SWITCHERS" ARE "YOUNGER ADULT SMOKERS WHO HAVE
21 ALREADY CHOSEN A FIRST USUAL BRAND"; correct?
22 A. Yes.
23 Q. The author then goes on to state "THAT FUBYAS,
24 NOT SWITCHERS, HAVE DRIVEN THE SUCCESS OF ... KEY
25 BRANDS OF THIS CENTURY"; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes.

2 Q. "THEY ARE THE LEADING INDICATORS OF GROWTH AND
3 DECLINE"; correct?

4 A. Yes.

5 Q. That would indicate that your advertising is not
6 aimed solely at effecting a switching decision;
7 correct?

8 MR. McDERMOTT: Object to the form of the
9 question.

10 A. I -- I never said it was.

11 Q. And you don't think that's the implication of
12 your advertisement that I showed you earlier today?

13 A. What advertising was that?

14 Q. The one where you said all your brand
15 advertising is directed towards switchers.

16 A. I never said that. In fact you asked me that
17 question. I said it was directed towards switching
18 and maintaining loyalty among the current franchise,
19 the current smokers of our brands.

20 Q. Okay. Well apparently there's also something
21 you left out of that advertising, which is that we
22 also advertise to get first-usual-brand smokers.

23 MR. McDERMOTT: Object to the form of the
24 question.

25 A. Again I will say as long as they're over the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 legal age, 18 years old and older.

2 Q. There's the advertisement. Did you state in
3 that advertisement anywhere that you also market to
4 obtain first-usual-brand smokers?

5 MR. McDERMOTT: Object to the form of the
6 question.

7 A. This is --

8 MR. McDERMOTT: That's not an
9 advertisement. And for the record, let's say what
10 the -- you and the witness are referring to.

11 MR. O'FALLON: Okay.

12 A. This is Exhibit 1117, a public opinion
13 campaign.

14 Q. Is that really --

15 A. The title is "We don't advertise to children."
16 And -- and your question is what?

17 Q. You don't tell the public there in your public
18 opinion campaign that one of the purposes of your
19 advertising is to attract first-usual-brand smokers,
20 do you?

21 A. First of all, the public wouldn't understand
22 what that meant.

23 Q. You probably could make it understandable to
24 them, though, couldn't you? You're a marketer.

25 A. I had nothing to do with this campaign, first of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 all, and neither did the marketing department. And
2 what purpose would I have for that? I see no purpose
3 for that.

4 Q. Well in maybe being up-front with the public and
5 saying, "You know, we know a lot of people who choose
6 their first usual brands are under 18, and frankly we
7 advertise to those folks, too, because of course what
8 we do doesn't affect what they do, so we're going to
9 do it."

10 MR. McDERMOTT: Object to the form of the
11 question.

12 A. I've tried to make it real clear that that is
13 not what we do. It's not what we have done. It's
14 not what we -- we do now. It's not our intent.

15 Our intent is to market our products to adult
16 smokers of legal age and above and not to market our
17 products to -- to youth.

18 Q. On page Bates number 558, it states "2. STRONG
19 PERFORMANCE AMONG FUBYAS SMOKERS IS CRITICAL TO LONG
20 TERM SHARE" OF "THE TOTAL SMOKER MARKET, FOR BOTH
21 BRANDS AND COMPANIES"; correct?

22 A. Yes.

23 Q. And again FUBYAS is that first usual brand;
24 right?

25 A. First-usual-brand younger adult smokers.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Right. It states that "ALTHOUGH SWITCHING CAN
2 BE IMPORTANT IN THE NEAR-TERM MARKET, LOYALTY AND
3 THUS FIRST-USUAL-BRAND SMOKERS, ARE THE DRIVING FORCE
4 OVER THE LONG TERM"; correct?

5 A. That's what it says.

6 Q. So it would indicate that what's important for
7 RJR is to focus in on that young adult market;
8 correct?

9 A. That's what this treatise does advocate, that we
10 focus on younger adult smokers, again 18 years of age
11 and plus, and again I have to state that there were
12 certain people that advocated focusing in on that, in
13 fact exclusively focusing on that. That is not what
14 the company did, and I will say personally and I
15 believe many others in the company don't believe
16 that's the only way that we can grow our business.

17 Q. You believe it's one way you can grow your
18 business, don't you, sir?

19 A. It -- yes, it is, for certain brands.

20 Q. It's an important way, isn't it?

21 A. It can be important, sure.

22 Q. And for certain brands, I mean, you really pick
23 the brand that you want to advertise as this first
24 usual brand; correct? It's not like the first usual
25 brand pops up and you say, "Ooh, wow."

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Certain -- certain brands have more ability to
2 have appeal among younger adult smokers. There's no
3 question about that. They have some equity that --
4 that adds to their appeal versus other brands.

5 Q. And what you did based on this study is you went
6 out and looked at which brand would have an appeal
7 among these first-usual-brand smokers. You
8 identified that brand as Camel, and you devised a
9 campaign to specifically reach the first-usual-brand
10 smokers; correct?

11 A. We -- we devised a campaign to appeal to
12 18-to-24-year-old smokers, younger adult smokers,
13 many of which were in the process of deciding their
14 first usual brand.

15 Q. And you knew at the time that you undertook that
16 campaign that you would necessarily also have appeal
17 to people under 18 years of age?

18 A. No, we had no reason to believe that.

19 Q. Okay.

20 A. We had no knowledge of that. We didn't do any
21 research among under 18. We had no interest in the
22 under 18.

23 Q. Let's look at page 588.

24 A. 588?

25 Q. That's right. This --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 This is called "IN TUNE = DIFFERENTIATION";
- 2 correct?
- 3 A. Yes.
- 4 Q. And it says "TO BE IDENTIFIABLE TO YOUNG ADULTS"
- 5 AS "YOUNG ADULTS, A BRAND MUST EMBODY ELEMENTS,"
- 6 parenthetical, "('WANTS')," end parenthetical, "WHICH
- 7 CLEARLY DIFFERENTIATE THE TARGET GROUP FROM ALL OTHER
- 8 GROUPS"; correct?
- 9 A. It says "TO BE IDENTIFIABLE AS YOUNG ADULT TO
- 10 YOUNG ADULTS."
- 11 Q. Right. "A BRAND MUST EMBODY ELEMENTS ('WANTS')
- 12 WHICH CLEARLY DIFFERENTIATE THE TARGET GROUP FROM ALL
- 13 OTHER GROUPS"; correct?
- 14 A. Yeah, that's what it says.
- 15 Q. Okay. It says "THUS, TO TARGET YOUNG ADULT
- 16 SMOKERS 18 TO 20," parenthetical, "(FIRST USUAL BRAND
- 17 SMOKERS), THE" BRANDS "MUST TARGET WANTS WHICH
- 18 ENDURINGLY DIFFERENTIATE YOUNG ADULT SMOKERS 18 TO 20
- 19 FROM ALL OTHER GROUPS"; correct?
- 20 A. That's what it says.
- 21 Q. That means what you need to do is go out and
- 22 differentiate them from smokers who were 21 and
- 23 older; correct?
- 24 A. I guess that's what this is saying.
- 25 Q. You need to differentiate them from nonsmokers

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 21 and older; correct?

2 A. Yes.

3 Q. You need to differentiate them from smokers 21
4 to 24; correct?

5 A. That -- that's what it says.

6 Q. You need to differentiate them from nonsmokers
7 21 to 24; correct?

8 A. Yes.

9 Q. And you also need to differentiate them from
10 nonsmokers even in their own age-group, 20 -- 18 to
11 20; correct?

12 A. That's what that means. That's what it says,
13 excuse me.

14 Q. This document then goes out to state what the
15 five key needs they believe are for young adults and
16 basically how you differentiate this
17 first-usual-brand young adult, this 18- to
18 20-year-old, from all other people; correct? And I'm
19 looking at --

20 A. I don't know.

21 Q. -- page 609.

22 By the way, this isn't the first time you've
23 seen this document, is it?

24 A. No, I've -- I've seen it before, but it's
25 obviously a very thick document among a lot of other

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 documents, so there are portions of this I will -- I
2 will admit to you that I don't even -- I don't
3 understand what points are being made.

4 What was that number again, 6 --

5 Q. 609. This talks about the differences within
6 young adult smokers on key needs; correct?

7 A. Yes.

8 Q. And it basically is saying you need to look at
9 its meaning and nature to first-usual-brand young
10 adult smokers; correct?

11 A. Yes.

12 Q. Which had been defined as this 18-to-20-year-old
13 age-group; correct?

14 A. Well I think it's 18 to 24.

15 Q. Well no, let's -- let's go back then.

16 A. I mean, the -- go on.

17 Q. Actually why don't you turn to page 608, the
18 previous page, just a page before it.

19 A. Oh.

20 Q. "THROUGHOUT THIS NEXT SECTION, WE WILL BE
21 TALKING ABOUT: 18 TO 20 YEAR OLD SMOKERS," which
22 they define as "FUBYAS"; correct?

23 A. That's how it's defined here, yes.

24 Q. Okay. Let's go back.

25 You also have to look at the differences between

1 FUBYAS and switchers, and they define switchers as
2 21- to 24-year-olds; correct?
3 A. Yes.
4 Q. You need to look at the relevance to marketing;
5 correct?
6 A. Yes.
7 Q. And you need to address five key needs; right?
8 A. Yes.
9 Q. And the key needs that the marketing needs to
10 address are belonging, being different, upward
11 striving, excitement and sex; correct?
12 A. That's what it says.
13 Q. And then it goes through to analyze all of that;
14 correct?
15 A. It shows some charts that I don't know what
16 these charts are. I guess -- well I don't know what
17 these are. This must have been a presentation and --
18 Q. At some point in time was this entire issue of
19 young adult smoking presented to the entire marketing
20 department?
21 A. I don't know if it was to the entire marketing
22 department. I know that there were numerous
23 discussions at this point in time between the
24 advocates of this point of view and members of the
25 marketing department. I don't recall whether it was

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the entire department, but there was a lot of
2 discussion throughout the department about this --
3 this theory, if you will.

4 Q. Did you --

5 A. And -- and again, there were those that
6 advocated it and -- and agreed with it, and there
7 were those that didn't. And again, I will point out
8 that during this period of time what we were working
9 on within the marketing department and as a company
10 as a whole indicated that we weren't solely focused
11 on this in our business, but there were some brand
12 efforts that -- that was consistent with the point of
13 view of marketing to younger adult smokers.

14 Q. Okay. Did anybody go back and tell whoever
15 wrote this document that sex shouldn't even be in the
16 mix because of course advertising that involved sex
17 would be a violation of the ad code?

18 A. That's not what the ad code says.

19 Q. So it's your testimony that ads which implicate
20 sex or that somehow you're sexier if you smoke or if
21 you smoke a certain brand, that wouldn't be a
22 violation of your ad code?

23 MR. LAYDEN: Objection.

24 MR. McDERMOTT: Object to the form of the
25 question.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. We can go back to the ad code and I can read it
2 specifically and --
- 3 Q. Why don't you just give me your statement. Is
4 it -- I want your interpretation of the ad code,
5 sir.
- 6 A. Well you're using different interpretations
7 there and it's hard for me to -- to answer your
8 specific question because you keep changing it, that
9 it started with involved -- involving sex --
- 10 Q. Okay. I'll break it down.
- 11 A. -- and that's not --
- 12 Q. I'll break it down.
- 13 A. Go ahead, please.
- 14 Q. Do you think an ad that involves sex or an
15 appeal to sex is a violation of the ad code?
- 16 A. No, I don't believe so.
- 17 Q. Okay. Do you think an ad that suggests that you
18 will be sexy if you smoke a certain brand of
19 cigarettes is a violation of the ad code?
- 20 A. No, I don't believe so.
- 21 Q. What do you think is a violation of the ad code
22 vis-a-vis sex?
- 23 A. As I recall, the language of the ad code has to
24 do with suggesting that smoking is essential to
25 sexual appeal, which is a big difference from what --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what you say. But beside the point, you know --

2 Q. It doesn't matter?

3 A. -- the fact that it --

4 MR. McDERMOTT: Let him finish his answer.

5 A. -- the fact that sex is indicated as a key need
6 of a population group, particularly 18- to
7 24-year-olds or 18- to 20-year-olds, doesn't mean
8 that it -- that it should be censored from
9 documents. It's just here as a -- as a statement of
10 fact.

11 Q. Following this time, marketing went on and
12 identified Camel as a document that would have appeal
13 to first-usual-brand young adult smokers; correct?

14 MR. McDERMOTT: As a document?

15 A. A document?

16 Q. Oh, as a cigarette. I'm sorry.

17 Following this time, marketing went -- went on
18 and identified Camel as a cigarette that would have
19 appeal to first-usual-brand smokers; correct?

20 A. I -- I -- I wouldn't -- I wouldn't relate it
21 that way. I think what we did is we decided that we
22 should position Camel to maximize its appeal among
23 younger adult smokers.

24 Q. But you did that based on testing you did
25 concerning the potential appeal Camel and your other

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 brands would have among that age-group; correct?

2 A. I don't recall that we -- specific testing that
3 we did.

4 Q. This is called -- this --

5 The document I've showed you is marked as
6 Plaintiffs' Exhibit 1039, Bates stamp number
7 50396 9310 through 9312, dated January 15th of 1985
8 from D. S. Burrows to J. T. Winebrenner, subject:
9 Camel's perceptions from qualitative FUBYAS research;
10 correct?

11 A. Yes.

12 Q. Okay. Ms. Burrows states, quote, "In response
13 to your request, here are some details of the
14 Strategic Research Group qualitative research in
15 August-September 1984, which led us to conclude that
16 CAMEL holds potentially leverageable interest among
17 18 to 20 year old smokers," parentheticals,
18 "(first-usual-brand young adult smokers)"; correct?

19 A. Yes.

20 Q. So in other words, when the decision was made to
21 target Camel towards the FUBYAS, it was based on the
22 fact that you went out and found that it had some
23 appeal to that group before; correct?

24 A. I don't know. This is qualitative research, so
25 you really can't conclude a whole lot from that. She

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 goes on to say "As you will see below, we did not
2 find that first-usual-brand younger adult smokers
3 react in an overall positive way to CAMEL," that
4 their product perceptions were negative and so on and
5 so forth, so it kind of goes both ways. And -- and
6 again it's -- it's a qualitative research that I
7 wouldn't base major decisions on in terms of reaching
8 valid conclusions.

9 I think what I stated is correct in terms of
10 what was happening in this time period, and that is
11 that we made a strategic decision to position Camel
12 to appeal to younger adult smokers.

13 Q. Let's look at the last page of the document. By
14 the way, Ms. Burrows is with the marketing
15 development department at this time; right?

16 A. Which was marketing research. She was in
17 strategic research, I believe, at this time.

18 Q. Well that's not what she says in this, does
19 she?

20 A. What does she say?

21 Q. Well she says "Marketing Development Department"
22 on the back.

23 A. Yeah, but that -- that was one of the -- that
24 was the marketing research department during this
25 period of time. I mentioned earlier that the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 marketing research department had gone through
2 different names over the past couple decades, and at
3 one time they were marketing research; another time
4 they were marketing development department; another
5 time they were BIAD or business information analysis
6 department.

7 Q. Who's J. T. Winebrenner?

8 A. He was, I believe, at this point the vice
9 president of brand marketing.

10 Q. Okay. So she's making this report to the vice
11 president of brand marketing?

12 A. Yes.

13 Q. She's making it to senior management in
14 marketing; correct?

15 A. Yeah.

16 Q. And what she tells him on the last page is that
17 "Although all 6 of these points rest on our
18 interpretations of qualitative input from FUBYAS
19 respondents, they were sufficient to convince us that
20 there is a leverageable 'spark' for CAMEL, among this
21 age group, which warrants further consideration";
22 correct?

23 A. Yeah.

24 Q. And you gave it further consideration; correct?

25 A. Yeah, we sure did. As I said, we decided to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 position Camel to appeal to 18-to-24-year-old
2 smokers.

3 Q. In fact, you went out and did even more
4 marketing research on various executions for Camel;
5 correct?

6 A. Oh, we certainly did, yeah. We -- we spent
7 years trying to develop an advertising campaign that
8 would correct negative perceptions that we had for
9 the Camel brand, particularly among 18-to-24-year-old
10 smokers.

11 MR. O'FALLON: I'm going to have to have
12 that marked. I thought that was marked, but it's
13 not.

14 (Plaintiffs' Exhibit 1122 was marked
15 for identification.)

16 BY MR. O'FALLON:

17 Q. I've marked as Plaintiffs' Exhibit --
18 Plaintiffs' Exhibit 1122 a document Bates stamp
19 numbered 50458 5737 through 50458 5757. This is a
20 marketing research report dated February 1st of 1985;
21 correct?

22 A. Right.

23 Q. And it's called "CAMEL YOUNGER ADULT SMOKER
24 FOCUS GROUP"; correct?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And it's being sent throughout marketing,
2 including again to the vice president of brand
3 marketing; correct?

4 A. Yes.

5 Q. Basically what happened here is you had a focus
6 group, I presume, of 18- to 20-year-olds who were
7 shown different ad campaigns; correct?

8 A. I don't know what the age-group was. I'd have
9 to look -- look through this. I'm fairly familiar
10 with this document, but I don't remember what
11 specific age-group the focus groups were among.

12 Q. I can tell you I don't believe it says.

13 A. Well then I'm not sure that it was 18- to
14 20-year-olds. It could have been and it most likely
15 was 18- to 24-year-olds.

16 Q. Well the previous documents have defined younger
17 smokers as opposed to young adult smokers as 18 to
18 20; right?

19 A. It defined first-usual-brand younger adult
20 smokers as 18 to 20, but that was -- in that one
21 document it wasn't necessarily -- it wasn't -- we
22 didn't use those definitions, you know, precisely
23 like that during the course of our activities. I
24 mean, usually for something like a focus group, it
25 would have been 18-to-24-year-old smokers; sometimes

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 it would have been -- the groups would have been
2 separated, 18 to 20, 21 to 24.

3 Q. One of the ad campaigns you showed this group of
4 smokers was the French Camel; correct?

5 A. That's how it's referred to here.

6 Q. And the French Camel is the cartoon Joe Camel;
7 correct?

8 A. No.

9 Q. It's going to become the cartoon Joe Camel,
10 isn't it, sir?

11 A. No. This was back in the mid-'80s, and
12 apparently they took what was the illustrated camel
13 that was used in -- in France and rendered it in --
14 in an exaggerated way with, it appears -- and these
15 are bad copies, but spiked hair, punk camels, that
16 kind of way, and -- and they got reactions to it.

17 Q. They rendered it as a cartoon?

18 A. Well it's -- they're all illustrations, which --
19 which many times at this stage when you're exploring
20 ideas, you get an artist to illustrate it rather than
21 go out and shoot things with a camera because of the
22 expense involved. So I believe all of these campaign
23 ideas are illustrations, and if, you know, you want
24 to be derogatory, you can call them cartoons because
25 they're --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. What --

2 A. -- they're illustrations.

3 Q. What leads you to believe that when I call it a
4 cartoon, I'd be derogatory?

5 A. Because a cartoon is usually associated with
6 kids.

7 Q. That's your problem; that's not a problem I
8 have.

9 MR. LAYDEN: Objection, argumentative.

10 Q. The fact of the matter is --

11 A. Let's proceed.

12 Q. -- is they're being illustrated not in a
13 realistic setting. Joe Camel as the French Camel
14 here -- and let's look specifically at page
15 50458 5745, 5746 and 5747.

16 A. Yes.

17 Q. He's being rendered in a cartoon-like fashion
18 because we all understand that camels don't have
19 spiked hair and smoke cigarettes; right?

20 A. They're illustrated camels, --

21 Q. But he's not --

22 A. -- that's correct.

23 Q. He's not illustrated in a realistic way, is he,
24 sir?

25 A. I don't know what is a realistic way.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 Q. Well then --
- 2 A. It's an illustration.
- 3 Q. Well --
- 4 A. No. If you mean that camels don't wear
- 5 sunglasses and don't have spiked hairs, yeah, that's
- 6 right; it's not realistic.
- 7 Q. It's a cartoon-like rendition.
- 8 A. Call it that, fine.
- 9 Q. Well let's look at -- at "Welcome to the
- 10 oasis." That shows a sailboat in a much more
- 11 realistic kind of position; correct? It's a
- 12 realistic rendition of a sailboat, isn't it?
- 13 A. Wait a minute. Let me get to that.
- 14 Q. It's right there. That's a realistic
- 15 representation of a sailboat.
- 16 A. I don't know. I can't even tell what's going on
- 17 in the background on this because it's such a poor
- 18 copy.
- 19 Q. The French Camel ads ran over in France and were
- 20 relatively successful; correct?
- 21 A. To my knowledge, it was a poster that was used
- 22 that we referred to as the French Camel of an
- 23 illustrated camel smoking a cigarette that was used
- 24 for a short period of time in France as some kind of
- 25 a promotional effort, and I don't -- I can't tell you

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what -- what the results of that promotional effort
2 were. I don't know.

3 Q. And the fact of the matter is, is that although
4 crude, what you have here as the French Camel, 5745
5 through 5747 -- and again I say "crude" mostly
6 because I can't tell based on how bad these copies
7 are that R.J. Reynolds has produced as to, you know,
8 precisely how good these drawings were -- is a
9 cartoon-like character that's -- that's reasonable to
10 assume is going to become as the predecessor of Joe
11 Camel; correct?

12 MR. McDERMOTT: Object to the form of the
13 question.

14 A. They were -- they -- these represented some
15 artist's rendition of an illustrated camel, very
16 exaggerated, to have punk hair and so on, and they
17 were rejected on that very basis, and it states here
18 why. And I will tell you that I have personal
19 knowledge of this time period because we were
20 exploring different ideas for Camel and trying to
21 decide what kind of a campaign idea would achieve our
22 objectives, those being to address negative
23 perceptions of the Camel brand among
24 18-to-24-year-old smokers and in fact improve the
25 brand's appeal among that -- that -- that group of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 adult smokers.

2 And I recall that agencies came up with some
3 renderings of camels that adult smokers told us were
4 too young looking and not only did not appeal to them
5 but they thought would have appeal to kids, and we
6 walked away from those because that was not what we
7 wanted to do, and I think these are examples. I will
8 tell you that this was an effort that occurred a
9 year, year and a half, maybe even two years prior to
10 us developing the Joe Camel approach by -- through a
11 separate agency and a separate brand team.

12 Q. Move to strike as nonresponsive.

13 So it's your testimony that these are not the
14 precursors and cannot be thought of as the precursors
15 to Joe Camel?

16 A. They occurred -- it was an exploratory that
17 occurred prior to Joe Camel, but they were not part
18 of the evolution of the development of the Joe Camel
19 campaign, no.

20 Q. Did you do subsequent testing with cartoon
21 characters that looked more like Joe Camel prior to
22 instituting your nineteen seventy -- your 75th
23 anniversary campaign that first introduced Old Joe?

24 A. I believe so. I believe that a couple years
25 after this -- this time period the brand team and

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 another agency developed renderings of illustrated
2 camels that ultimately led -- and they were tested.
3 They were focus group tested and -- I believe. That
4 ultimately resulted in the Joe Camel campaign.

5 Q. Let's go back and see what the focus group or
6 what this author said the focus group had to say
7 about the French Camel, and that's on page 5739. Are
8 you there?

9 A. Yes.

10 Q. "2. 'French Camels.' These ads were well" --
11 "well received due to the fun/humor aspects of the
12 cartoons." Apparently this person thinks they're a
13 cartoon as well; right?

14 A. That's what it says.

15 Q. Yeah. "More than any other theme, the 'French
16 Camels' appeared to attract the respondents'
17 attention"; correct?

18 A. (Nodding head.)

19 Q. "The main drawbacks of these executions were
20 that: one, they may be more appealing to an even
21 younger age group and two, there is some confusion as
22 to the meaning behind them," parenthetical, "(some
23 focus group members were hard-pressed to explain the
24 purpose of the ads)," end quote.

25 The fact of the matter is that you showed a

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 cartoon. It was a camel that's going to be like Joe
2 Camel, and people liked it; correct?

3 MR. McDERMOTT: Object to the form of the
4 question.

5 A. No, I can't -- I won't agree with that.

6 Q. Okay. And knowing that this cartoon may be even
7 more appealing to a younger age-group, you
8 nonetheless went forward and developed a cartoon-like
9 character, Joe Camel; correct?

10 A. No, that -- that's not true at all --

11 MR. McDERMOTT: Objection.

12 A. -- and I just stated that that wasn't true. In
13 fact, knowing that we were getting feedback that it
14 would appeal to a younger age-group, we rejected it,
15 and it wasn't -- it wasn't worked on any further
16 until another agency, another brand group ended up
17 coming back with an idea of using an illustrated
18 camel that was unlike anything here that had appeal
19 among the -- the intended age-group and ultimately
20 became the Joe Camel campaign.

21 Q. But you knew that any cartoon was going to have
22 some appeal to a younger age-group; correct?

23 A. No, I didn't know that, neither did the people
24 here that worked on this.

25 Q. Well that's kind of a reasonable thing to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 assume, isn't it?
- 2 A. It was an illustrated character. There are
- 3 thousands of illustrated characters that are used for
- 4 adult products and very, very successfully.
- 5 Q. There are thousands of cartoons used for adult
- 6 products and also for kids' products; correct?
- 7 A. That's -- that's fine. Yeah, I would agree to
- 8 that. There are many.
- 9 Q. And you know that kids in particular like
- 10 cartoons; correct?
- 11 A. Kids and adults like illustrations, like
- 12 cartoons.
- 13 Q. You agree with that?
- 14 A. Some kids like cartoons, yes.
- 15 Q. A lot of kids like cartoons, don't they?
- 16 Watch a Saturday morning lineup recently?
- 17 A. No, but --
- 18 Q. Your kids?
- 19 A. No. They're past that age.
- 20 Q. Okay. Did your kids watch the Saturday morning
- 21 lineups?
- 22 A. Sure, sure.
- 23 Q. Mostly cartoons on the Saturday morning lineup,
- 24 huh?
- 25 A. Both, yeah.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Even if you were only aiming at the
2 18-to-20-year-old age-group, R.J. Reynolds knew that
3 younger people would emulate the habits of the
4 18-to-24-year-old age-group as well; correct?

5 A. No, I can't -- I don't -- I don't know that we
6 knew that.

7 (Plaintiffs' Exhibit 1123 was marked
8 for identification.)

9 BY MR. O'FALLON:

10 Q. Have you seen this document before?

11 A. Yes, I have. This is back to the 1977 period.

12 Q. Would you have seen it back at that time period
13 or did you just see it recently in prepping for this
14 deposition?

15 A. The latter.

16 Q. You saw it prepping for this deposition?

17 A. Yes, I believe so. Did --

18 Q. Let's go down to "Younger Smokers," and again
19 Exhibit 1123 is a document Bates stamp numbered
20 50138 0878 through 50138 0889, dated October 31st,
21 1977. The name at the top is Mr. T. L. Ogburn, Jr.
22 Do you know who that is, by the way?

23 A. Yes.

24 Q. Who was he at that time?

25 A. He was in the marketing research department.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Okay. Under "Younger Smokers" he states, quote,
2 "As a group, younger smokers probably emulate the
3 smoking habits of smokers in the next oldest group,
4 the 18 to 24 year olds, since trends for younger
5 smokers tend to follow (by 2 to 3 years) trends for
6 the latter group"; correct?

7 A. That's what it says.

8 Q. Thus, you know that when you aim a cigarette at
9 the 18-to-20-year-old age-group, in all likelihood
10 the people younger than that are going to try to
11 emulate that group, the 18-to-20-year-old age-group;
12 correct?

13 A. Again that may be the case. I don't know that.
14 I don't think the company knew that per se. We
15 weren't focused on it. We didn't discuss that. It
16 wasn't our intent.

17 Q. Well this gentleman apparently knew it;
18 correct?

19 A. Well he -- he says "probably." He's given his
20 opinion on it for whatever reason.

21 Q. One of the reasons people start to smoke is due
22 to peer influence; correct?

23 A. Yes.

24 Q. And --

25 A. That's my understanding.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. -- when you decided to aim Camel at the
2 18-to-20-year-old age-group, you decided to use peer
3 influence to try to get people to smoke Camel;
4 correct?

5 A. No, that's not -- that's not the same thing.

6 Q. I'm going to show you what's been previously
7 marked as Plaintiffs' Exhibit 1040. This is a
8 document Bates stamp numbered 50396 9238 through
9 50396 9242, dated March 12th, 1986, and it's
10 addressed to you; correct?

11 A. Yes.

12 Q. And the title of it is "CAMEL New Advertising
13 Campaign Development"; correct?

14 A. Yes.

15 Q. You state that your advertising --

16 It's stated to you that the advertising
17 objective is as follows: Quote, "Overall, CAMEL
18 advertising will be directed toward using peer
19 acceptance/influence to provide the motivation for
20 target smokers to select CAMEL." Specific --
21 "Specifically, advertising will be developed with
22 the objective of convincing target smokers that by
23 selecting CAMEL as their usual brand they will
24 project an image that will enhance their acceptance
25 among their peers"; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's what it says.

2 Q. And in fact, you knew that one of the reasons
3 people start to smoke is so that they will be
4 accepted among their peers; correct?

5 A. That's two different things.

6 Q. But you did know that one of the reasons people
7 start to smoke is to be accepted among their peers;
8 correct?

9 MR. McDERMOTT: Object to the form of the
10 question.

11 A. The reason why people smoke is because their
12 friends smoke, their peers smoke, and that has a
13 great deal of influence as to whether or not someone
14 will choose to smoke, if they're surrounded by other
15 smokers within their peer group. It's a very
16 different thing, starting smoking, peer group
17 influence, versus what is being stated here.

18 Q. The fact of the matter is, is that this Camel
19 campaign, this Joe Camel campaign that you came up
20 with in about 1987 using this illustrated figure or
21 cartoon character, was very successful in increasing
22 your volume among these first-usual-brand smokers;
23 correct?

24 A. Ultimately it was successful increasing -- in
25 increasing our share among 18-to-24-year-old

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smokers.

2 Q. And the first-usual-brand group; correct?

3 A. I don't know that for a fact because we had no
4 way of measuring that. If -- if you define 18- to
5 20-year-olds as first usual brand, yes, it had a
6 positive effect of increasing our share among that
7 age-group.

8 Q. It may have also had a positive effect on
9 increasing your share in the underage group;
10 correct?

11 A. It may have.

12 Q. That would stand to reason because at some point
13 as people turn 18 -- and we know that the majority of
14 them started smoking beforehand -- it would stand to
15 reason they picked Camel before that time; correct?

16 MR. McDERMOTT: Object to the form of the
17 question.

18 A. I don't know. As Camel increased its
19 popularity, which it did among all age-groups, partly
20 as a result of that campaign, it -- it does stand to
21 reason that kids may select it more often because in
22 general it's a more popular brand. That was not our
23 intent again.

24 Q. Well no, your intent was to make it a popular
25 brand, wasn't it?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. Among adult smokers of legal age.
- 2 Q. Well, among 18- to 20-year-olds; correct?
- 3 A. 18 to 24 specifically, yeah.
- 4 Q. At least so you state in your documents; right?
- 5 A. No, no, that's our intent.
- 6 Q. And the fact of the matter is, is that you knew
- 7 when you went after the 18-year-old smokers you were
- 8 going to hit that -- that younger group right behind
- 9 them?
- 10 A. No, we didn't know that. We had done no work.
- 11 Our intent, our interest was not to attract that
- 12 younger group, and I don't think there's evidence --
- 13 any evidence whatsoever that there -- we created any
- 14 more smokers among kids, that any kids took up
- 15 smoking as a result of our efforts on -- on Camel.
- 16 Q. I've handed you a document that's been
- 17 previously marked as Plaintiffs' Exhibit 1042, Bates
- 18 stamp numbered 50718 1150 through 50718 1157. It's
- 19 entitled on the first page "VOLUME IMPACT OF CAMEL
- 20 YAS GROWTH," and it said "Did CAMEL show sustained
- 21 growth among YAS in 1988, or was" it "a 'blip'?"
- 22 That's what the first paragraph says; right?
- 23 A. Yes.
- 24 Q. It says "In 1988, CAMEL Ex. Regular posted a 2.2
- 25 point national gain in usual brand share among males

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 18 to 24 (the brand's target) and a gain of 1.4
2 points among total 18 to 24," parenthetical, "(YAS),"
3 end parenthetical; correct?

4 A. Yes.

5 Q. So apparently you're tracking those who you have
6 as a first usual brand.

7 A. No. You're misinterpreting this. We classify
8 smokers in the volume as usual brand smokers and --
9 or occasional brand smokers because we're aware
10 that -- that smokers in general divide their loyalty
11 among brands, that they don't only smoke one singular
12 brand, even if they say, "That's my brand of choice.
13 That's my usual brand." And so we do track for each
14 of our brands the -- the -- the number, the share of
15 smokers who cite, in this case, Camel as their usual
16 brand and also smokers that cite Camel as an
17 occasional brand, a brand that they buy occasionally;
18 whereas, they may indicate that Marlboro is their
19 usual brand, and vice versa.

20 We see this on all the brands, so each brand has
21 a share of smokers that constitutes smokers that
22 indicate that it -- that that brand is their usual
23 brand and a share of smokers that indicate that that
24 brand is an occasional brand, a brand that they
25 purchase occasionally.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Okay.

2 THE REPORTER: Off the record, please.

3 (Discussion off the record.)

4 A. All right. Just can I -- because I read this
5 and I'm not sure I explained that well.

6 We do look at those smokers that indicate that a
7 particular brand is their usual brand and we look at
8 those smokers who indicate that they have another
9 usual brand but they use our brand, Camel in this
10 case, occasionally.

11 In this case, they're referring, however, to
12 males 18 to 24 and then total 18 to 24, meaning that
13 that's the share of total 18 to 24s, including
14 females 18 to 24.

15 Q. Okay. In any event, this was the largest
16 12-month YAS gain ever recorded; correct?

17 A. I'd have to read this.

18 Q. Okay. Well it says, quote, "This was the
19 largest 12-month YAS gain ever recorded on Tracker,
20 for CAMEL or any other RJR brand"?

21 A. That's what it says.

22 Q. Right. Then if you look at the next paragraph
23 and look at the second sentence of the next
24 paragraph, it says "The timing of this turnaround
25 appears closely related to key changes in CAMEL

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 marketing."

2 A. Yes.

3 Q. "National expansion of the 'Old Joe' imagery"

4 would be one?

5 A. Yes.

6 Q. And "Return of YAS-oriented retail pack

7 programs, which had been absent outside CAMEL's

8 emphasis markets for at least a year"; correct?

9 A. Right.

10 Q. And again, when RJR markets a product, it uses

11 an umbrella approach. It uses advertising, but it

12 also uses pack promotions and numerous other things;

13 correct?

14 A. Yeah, there are many elements to the marketing

15 mix besides just advertising.

16 Q. Let's look at page 152, last three Bates

17 numbers. It states "The most direct evidence of YAS

18 impact on CAMEL Ex. Regular sales is its share trend

19 in Nielsen pack-outlets outside the" PS -- "the

20 PMSA," parenthetical, "(about 300 convenience plus

21 small food stores)," end parenthetical; correct?

22 A. Yes.

23 Q. "In these stores, YAS account for about 13.4

24 percent of volume and appear to have generated sales

25 gains for CAMEL Ex. Regular of the expected amount

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (.2 share points) and the expected timing"; correct?

2 A. Yes.

3 Q. It says "This is the largest sustained increase
4 ever seen in CAMEL Ex. Regular's share" at -- "in
5 these outlets"; correct?

6 A. Yes.

7 Q. And you knew for a fact that young adult smokers
8 and potentially underage smokers traditionally bought
9 their cigarettes at places like convenience stores;
10 correct?

11 A. We knew for a fact that younger adult smokers
12 tend to buy cigarettes by the pack. They purchase by
13 the pack and they tend to purchase more in
14 convenience stores and small food stores than -- than
15 supermarkets, which are where the other Nielsen
16 outlet types that were tracked.

17 Q. I'd like to show you a document that's been
18 marked as Plaintiffs' Exhibit 1046. This is a
19 document Bates stamp numbered 50961 0900 through
20 50961 0910. Do you recognize this document?

21 A. I recall seeing it recently as part of these
22 proceedings.

23 Q. You don't recall seeing it previously as part of
24 your work?

25 A. I may have. I don't -- I don't have a specific

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 recollection.

2 Q. The purpose of this document is "TO REVIEW
3 MEASURES THAT EVALUATE THE EFFECTIVENESS OF CAMEL'S
4 REPOSITIONING"; correct?

5 A. That's what it says.

6 Q. Okay. Let's look at the back, at 909.

7 A. 909, excuse me.

8 Q. This is the summary; correct?

9 A. Uh-huh, yes.

10 Q. It states "KEY MEASURES THAT INDICATE
11 EFFECTIVENESS OF REPOSITIONING INCLUDE," and it then
12 goes on to list four key measures; right?

13 A. Yes.

14 Q. One of those is "ATTITUDINAL SHIFTS IN
15 MODERNITY" AND "PEER ACCEPTANCE"; correct?

16 A. Yes.

17 Q. It would be reasonable to state that by this
18 time, which I believe is sometime in 1991, Camel had
19 been successful in convincing people that Camel was a
20 smoke -- was a cigarette they should use to gain peer
21 acceptance; correct?

22 A. No. That wasn't the intent. You're referring
23 to a statement that was made in a document written to
24 me back in 1986 that had indicated an advertising
25 objective that did not result in the current campaign

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 or the Joe Camel campaign and indicating that that
2 was the objective or the intent of the Joe Camel
3 campaign. That's not the case.

4 Q. You're stating that peer acceptance was never
5 part of the Joe Camel campaign?

6 A. It was --

7 Q. That's your testimony?

8 A. It -- to my knowledge, it was not a cornerstone
9 of the advertising objective.

10 Q. Was it an aspect?

11 A. I don't remember. I'd have to go back and look
12 at the documents for the Joe Camel campaign that
13 indicate its advertising objective.

14 Q. Well this appears to indicate that whatever its
15 advertising objective was, one of the things it had
16 achieved was peer acceptance; correct?

17 A. I don't know. I have to go -- I have to look at
18 this for a minute.

19 (Witness reviews exhibit.)

20 A. I believe that some of this information could be
21 interpreted to suggest that among peer groups who may
22 not select Camel as their usual brand, that Camel
23 has -- has improved its perceptions.

24 Q. It's gained peer acceptance?

25 A. It's just more popular. It's a more acceptable

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 brand.

2 Q. The fact of the matter is that in your Joe Camel
3 campaign you used sex to appeal to the smokers,
4 didn't you?

5 A. No. I don't -- I'm not aware of any specific
6 instance where we used sex.

7 MR. O'FALLON: Why don't we have that
8 marked.

9 (Discussion off the stenographic record.)

10 (Plaintiffs' Exhibit 1124 was marked
11 for identification.)

12 BY MR. O'FALLON:

13 Q. Plaintiffs' 1124 is a document Bates stamp
14 numbered 50687 6716 through 6718. Have you seen this
15 ad before?

16 A. Yes.

17 Q. This is an advertisement, isn't it, sir?

18 A. It's a promotion actually.

19 Q. Well --

20 A. It's an ad for a promotion. I will grant you
21 that.

22 Q. And it's one you ran; correct?

23 A. Yes.

24 Q. "You" meaning R.J. Reynolds Tobacco Company;
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. Yes.
- 2 Q. Let's look on the first page. It says "BORED?
3 LONELY? RESTLESS? WHAT YOU NEED IS..." Think that
4 appeals to sex, sir?
- 5 A. Not really. This was an attempt to use humor --
- 6 Q. Really?
- 7 A. -- to try to be more --
- 8 Q. You think she's funny?
- 9 A. Well look at the totality of it.
- 10 Q. Look at the first page.
- 11 A. Fine.
- 12 Q. Do you think that's funny?
- 13 A. She is an attractive female.
- 14 Q. That may be the biggest understatement you've
15 made here today.
- 16 A. Okay. It's a matter of --
- 17 MR. McDERMOTT: I object to the comments of
18 counsel.
- 19 A. -- it's a matter of interpretation, but she is
20 an attractive female to introduce a multi --
21 multipage ad for a promotion that attempted to use
22 humor to make the brand more relevant among younger
23 adult smokers.
- 24 Q. Well humor, that's interesting. Let's see.
25 What you're going to offer is foolproof dating

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 advice; right? You're going to tell these people,
2 these Camel smokers, how they can be more attractive
3 to the opposite sex; right?

4 MR. LAYDEN: Objection, compound.

5 A. Again I told you it was intended to use humor,
6 and frankly some of it turned out to be in poor taste
7 and was a judgment error on our part. And we took a
8 lot of grief for it and we instituted some policies
9 within the company to ensure that -- or to minimize
10 the -- the chances that we would do a similar thing
11 in the future.

12 Q. Well --

13 A. We're not perfect.

14 Q. -- at this point I'm going to concentrate more
15 on whether this violates the Advertising Code.

16 A. Okay.

17 Q. The fact of the matter is you would agree that
18 you're not supposed to suggest that someone's appeal
19 to the opposite sex is based on Camel; correct?

20 A. Is based on smoking.

21 Q. Based on --

22 Well Camel's a cigarette; right? I presume
23 these people aren't using Camel to build stick
24 buildings.

25 A. Yeah, I'm just trying to refer to the -- the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 specifics of the ad code.

2 Q. As was I.

3 Now on page two your foolproof dating advice
4 included always give -- and again this is a terrible
5 copy -- "Always break the ice by offering her a
6 Camel"; correct?

7 A. Yes.

8 Q. Indicating again that if you can offer a Camel,
9 you might get a date. That's the implication, isn't
10 it, sir?

11 MR. McDERMOTT: Object to the form of the
12 question.

13 A. No, that's not the implication. Again this was
14 all tongue in cheek, the entire effort, and I
15 don't -- I don't know anyone in the marketplace that
16 didn't see it as tongue-in-cheek humor.

17 Q. Well especially adolescent boys, they might
18 consider this real funny; right?

19 A. I wouldn't know. It was not geared to them.

20 Q. Well let's go on the last page. "How to get a
21 FREE pack even if you don't like to redeem coupons";
22 right?

23 A. (Nodding head.)

24 Q. Well there's another group of people who not
25 only don't like to redeem coupons but have problems

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 redeeming coupons, and that's people under the age of
2 18; right? Correct?

3 A. That's -- could be correct.

4 Q. And you sure tell those folks how they can go
5 ahead and get them redeemed, don't you?

6 A. That's not the intent of this.

7 Q. And get their free pack of Camels. For
8 instance, you can "Ask your best friend to redeem
9 it"; right?

10 A. That's not the intent of this.

11 Q. You can "Ask a good-looking stranger to redeem
12 it," and then you can "Offer each a Camel and start a
13 warm, wonderful" relationship; correct?

14 A. That's what it says.

15 Q. Indicating that again if you smoke Camels and
16 offer somebody else a Camel, by -- you might be real
17 popular with a whole lot of people, including the
18 opposite sex; correct?

19 A. I don't interpret it that way, but --

20 Q. That wouldn't --

21 A. -- it's open to interpretation.

22 Q. -- be an unreasonable interpretation, though,
23 would it, sir?

24 A. I don't know whether it would be reasonable or
25 unreasonable. That wasn't its intent.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Do you have any -- any idea how much money
2 Camel -- or how much money R.J. Reynolds has spent
3 upon trying to convince youth to stop smoking as
4 compared to the amount of money it spent on
5 advertising in general?

6 A. Well it's a lot less. They're kind of apples
7 and oranges in my mind. The amount that we spend on
8 advertising and marketing is influenced a great deal
9 by the competitive environment. The amount that is
10 spent to deal with the social problem of youth
11 smoking is a -- an entirely different matter, and
12 frankly we're -- that's not -- we're not in the
13 business of doing that. We try to do what we can.

14 There are many others that are addressing that
15 problem, so it's not a matter of spending, and I
16 think the comparisons are meaningless.

17 Q. Well let's take a look at one of those
18 meaningless comparisons.

19 MR. O'FALLON: Do you want to give me the
20 documents we previously marked.

21 THE REPORTER: Off the record, please.

22 (Discussion off the record.)

23 BY MR. O'FALLON:

24 Q. Would you find it surprising if the statistics
25 reveal that the amount spent by R.J. Reynolds between

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 1954 to 1994 on, quote, unquote, "youth prevention
2 campaigns" was approximately 19 million; whereas, the
3 amount that they spent on advertising, marketing and
4 other promotional expenditures during that same time
5 period was approximately \$9.7 billion?

6 A. No, it wouldn't -- it wouldn't surprise me. I
7 can't authenticate those numbers, but it doesn't
8 surprise me. Again they're apples and oranges.

9 MR. O'FALLON: I have no further
10 questions.

11 THE REPORTER: Off the record, please.

12 (Discussion off the record.)

13 MR. REDGRAVE: This should reflect a
14 discussion among counsel for plaintiffs and Reynolds
15 that the volume of the transcript from today of the
16 testimony of Dr. Robinson as well as Mr. Iauco will
17 be temporarily designated as Category I under the
18 Minnesota protective orders due to the reference to
19 at least one Category I document, and Reynolds will
20 be reviewing the transcript within the allotted 30
21 days to address the category designations for
22 confidentiality.

23 MR. O'FALLON: Okay. With the proviso
24 that, as far as I can remember, the only Category I
25 document used was used with Dr. Robinson, and it's my

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 understanding that the vast majority of the
2 transcript will be downgraded, but for those specific
3 parts that either refer to that document or involved
4 information from that document or any other document
5 that's Category I; correct?

6 MR. REDGRAVE: I expect that to be the
7 case. We will undertake the review necessary.

8 THE REPORTER: Off the record, please
9 (Deposition recessed at 1:34 o'clock
10 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that
3 I am qualified as a verbatim shorthand reporter; that
4 I took in stenographic shorthand the testimony of
5 JOHN H. ROBINSON AND DAVID N. IAUCO at the time and
6 place aforesaid; and that the foregoing transcript
7 consisting of pages 207 through 418, Volume III, is a
8 true and correct, full and complete transcription of
9 said shorthand notes, to the best of my ability.

10 Dated at Las Vegas, Nevada, this 22nd day
11 of August 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, JOHN H. ROBINSON, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 207 through 305, Volume III, and
5 that said transcript is a true and correct, full and
6 complete transcription of my deposition, except per
7 the attached corrections, if any.

8

9 (Please check one.)

10

11 ____ Yes, changes were made per the attached
12 (no.) ____ pages.

13

14 ____ No changes were made.

15

16

17 JOHN H. ROBINSON

18 Deponent

19

20 Sworn and subscribed to before me this day
21 of 199__.

22

23

24 Notary Public

25 My commission expires: (WCL)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, DAVID N. IAUCO, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 306 through 418, Volume III, and
5 that said transcript is a true and correct, full and
6 complete transcription of my deposition, except per
7 the attached corrections, if any.

8

9 (Please check one.)

10

11 ____ Yes, changes were made per the attached
12 (no.) ____ pages.

13

14 ____ No changes were made.

15

16

17 DAVID N. IAUCO

18 Deponent

19

20 Sworn and subscribed to before me this day
21 of 199__.

22

23

24 Notary Public

25 My commission expires: (WCL)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953